STATE OF UTAH

REPORT OF THE

Employer's Liability and Workmen's Compensation Commission

TO THE

ELEVENTH SESSION OF THE LEGISLATURE OF UTAH

TOGETHER WITH DRAFT OF

THE BILL SUBMITTED

EMPLOYER'S LIABILITY AND WORKMEN'S COMPENSATION COMMISSION

Appointed by

GOVERNOR WILLIAM SPRY

Under and By Virtue of the Authorization of

SENATE BILL No. 245

Introduced By

SENATOR D. O. RIDEOUT

In the Eleventh Session of the Legislature of the

STATE OF UTAH

For Presentation to the Legislature of 1917

DON B. COLTON, Chairman,
Vernal, Utah.

LE GRAND YOUNG, Vice Chm.,
Salt Lake City, Utah.

IRA R. BROWNING,
Castle Dale, Utah.

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Salt Lake City, Utah.

H. B. WINDSOR, Secretary,
Salt Lake City, Utah.

H. K. RUSSELL, Asst. Secty.,
Salt Lake City, Utah.

CHAS. H. PEARSON,
Ogden, Utah.

To the Honorable, the Governor, and the Members and the Members-elect of the Legislature of the State of Utah, the Year 1917.

Gentlemen:

The Legislature of the State of Utah, with the approval of the Honorable Governor William Spry, in its last session of 1915, passed an act entitled "An Act to Provide for the Appointment of a Commission to Inquire into the Question of Employers' Liability and Other Matters, and provide an appropriation therefor," which law reads as follows, to-wit:

Section 1. That the Governor of this State is hereby authorized and directed to appoint a commission to consist of seven members, as follows: One State Senator, one State Representative, two employers of labor, two representatives of labor and one attorney-at-law. The duties of the Commission so appointed shall be to make an inquiry, examination and investigation into the subject of a direct compensation law or a law affecting the liability of employers to employes for industrial accidents.

Section 2. That the members of such Commission shall serve without compensation, except that each shall be entitled to his actual and necessary expenses incurred in the performance of his duties under the provisions of this Act.

Section 3. That for the purpose of its investigations the Commission or any member or sub-committee thereof, is hereby authorized to visit different localities in the State, to send for persons and papers, to investigate the laws of other States and countries, to administer oaths and to examine witnesses and papers respecting all matters pertaining to the subjects referred to in ths Act, to purchase books and supplies and to employ and pay all necessary assistants.

Section 4. That the expenses incurred by the Commission, and its employes shall be paid upon the presentation of proper itemized vouchers signed by the chairman of the Commission and approved by the Governor, provided such expenses shall not exceed five hundred dollars.

Section 5. That the Commissioner of Immigration, Labor and Statistics is hereby directed to co-operate with the Commission and to render it any proper aid and assistance by the Bureau of Immigration, Labor and Statistics, as, in his judgment, will not interfere with proper conduct of his department.

Section 6. The Commission herein authorized to be appointed shall organize by the election of a chairman and secretary and shall submit a full report of its work and findings to the members and members-elect of the next Legislature at least sxty days before its next regular session, and shall include therein its recommendations for legislation, together with such bill or bills providing for a speedy remedy for employes for injuries received.

Pursuant to the provisions of Section 1 of the law above quoted, the Governor, Honorable William Spry, on the 1st day of March, 1916, appointed the Commission, provided for under said Act, consisting of the Senator, Don B. Colton; Representative, Ira R. Browning; Mr. R. C. Gemmel, Mr. H. B. Windsor, Mr. H. K. Russell, Mr. Charles H. Pearson and Mr. LeGrand Young. The Commission met immediately and selected the following officers: The Honorable Don B. Colton, Chairman; Mr. LeGrand Young, Vice-Chairman, and Mr. H. B. Windsor, Secretary, and Mr. H. K. Russell, Assistant Secretary, who at once entered upon the work for which they were appointed.

In the judgment of your committee, among the first of their duties was to investigate the laws of the several States and to ascertain the nature of their working, as well as the Commission could do in the time they had and with practically no means at their command, to make their findings and report them. The Secretary of the

Commission, under its instructions, communicated with a number of the various commissions and officers of the several States, in relation to the matter in hand, asking for their latest laws and proposed bills, and inquiring into the workings thereof. Prompt answers came to the letters so written, with the views of several men who had given the subject years of study. One or two of our members, also, at their own expense and while on eastern trips, visited various states and brought back word of their experience. The Commission also had some most valuable interviews with Chairman Mullin of the Nevada State Commission when he was stopping over in Salt Lake and adopted valuable suggestions from him.

It is to be regretted, however, that the Commission could not have visited other states as a body, to observe, at first hand, the operations of the various laws.

Other States gave their Commissions as many thousands as we had hundreds, which enabled them to employ a paid Secretary and to have the needed clerical help, as well as to do a reasonable amount of traveling.

After a very thorough investigation of the several laws now in force, your Commission formulated the bill which is herewith returned to your Honorable Body, and it is made a part of this report.

It is too early yet to finally pass upon the merits of the system. The legislation on the subject in America is but a few years old, and the experience under the earlier laws was not such as to give much important information or data. This statement, however, does not apply to the experience of the different governments of Europe. It is now some thirty years or more since the German government passed laws in regard to workingmen's compensation, doing away with the liability law. It was some time later that the Austrian-Hungarian parliament and the English parliament undertook to deal with this important question.

The experience of these several governments, viewed through the workings of the boards and commissions, under these laws have been examined by delegations from this country and men appointed by Congress and also from some of the States of the Union. After the most thorough and searching investigation by the commissions so appointed, as well as by other parties who have interested themselves in this question, it seems to be the universal verdict, so far as the principle is concerned, that the workingmen's compensation law is far ahead of the employers' liability law, both in favor of the workingman and the employer.

In our endeavors to find the best precedents we could obtain, we have studied, in a tentative way, all the laws, and quite thoroughly some of the laws, of the different States, and after a pretty thorough investigation, the commission came to the conclusion that the statute of Indiana, approved by the session of its Legislature of 1915, was about the most up-to-date piece of legislation found on this subject. So we have practically adopted the Statute of Indiana. Of course, your Commission has had to make some additions and amendments, but as a whole, it has used that Statute as a basis for its bill, with the addition of desirable features from the Compensation Laws of Colorado, Nevada, Montana, and from the very latest of all, that of Kentucky.

The bill we present to your Honorable Body makes the title of the proposed law *"The Utah Workmen's Compensation Act."*

The bill is divided into five parts. Part one deals with the rights and remedies; part two the compensation schedule; part three has to do with the administration of the proposed law; part four deals with the question of insurance, and provides the manner in which the compensation of workingmen shall be secured, and part five has reference to definitions and miscellaneous provisions.

The Commission in this report does not attempt a thorough analysis of this bill, as the bill itself is a part of your Commission's report and it will speak for itself. Besides this, there is added to the bill a general digest which, to some extent, does away with the necessity of analysis of different parts of it. Your Commission will, however, make a brief reference to a few prominent provisions of the bill.

First. The bill provides that it shall be presumed that all employers and all employes and the legal representatives of any and all deceased employes shall accept the terms of the Act, and that if they decline to accept the terms of the proposed law they will have to give notice, as provided in the law itself. By this provision it will be seen that the law is elective. This question of making the Act elective or mandatory is one that engaged the attention of your Commission for some time, and after a thorough discussion they concluded to adopt the elective form in preference to the compulsory.

Among the reasons for this view are that most of the States have adopted a form of bill of this style, and besides that, the Commission believed it to be more in harmony with the genius of our institutions, and that it would also be better received by the employer and the employe in this form. At an early period in our investigations and discussions we met with the important provision of our Constitution in regard to the rights of representatives of deceased persons. The provision we have reference to is Section 5, Article 16 of the Utah Constitution, which reads: *The right of action to recover damages for injuries resulting in death shall never be abrogated, and the amount recoverable shall not be limited by any statutory regulation.''*

Our view of this section of the Constitution is that we could not, in any way, limit the right of the heirs or next of kin of a deceased person, who had met his death through the negligence of some other party, from claiming

the right to sue for damages in any amount that such heirs or next of kin might elect to name.

After a thorough discussion of this question the Commission believes they have met this inhibition of the Constitution in a manner that will be in harmony with the provision above quoted. In this law the Commission has not tried to take away the right of the next of kin or the heirs of deceased persons to bring an action against an employer to recover any amount they desire. The proposed act gives the representative of a deceased person a new right which they can accept if they so elect. If the representatives of a deceased person decline to accept the provisions of this bill, or indeed, if any injured person refuses to accept the provisions of the law, having exempted himself, by proper notice, the bill has restored to the employer who has accepted the provisions therof the right to defend himself against the claims of such parties the unrestricted right of all common law defenses, such as the negligence of a fellow servant, contributory negligence and the assumption of risk by the injured party as such defenses existed before any amendments to them by the Statutory law.

Your Commission are well aware there will be some criticism on this particular point; they presume it will be said that while the law pretends to preserve the right of the legal representatives and next of kin of a deceased employe to sue for any sum, it coerces such party and forces him to accept the law by giving to the employer the defenses that will defeat the recalcitrant heir. Possibly this may be the effect of it, but your Commission fully believes that the Legislature is justified in this class of legislation, in placing all employes on the same footing as near as it can, and if any, who happen to be exceptionally favored, and on that account or for cny reason, decline to be governed by the provisions of this statute, your Commission is inclined to believe that the employers who do accept the law should receive all the protection it is possible to give them.

The Act or proposed Act provides that it shall not apply to casual laborers or to employers who employ less than four in the same industrial employment, nor to private householders, nor to domestic servants.

It will be noticed that Section 9 does not except *agriculture.*

This is a most interesting question.

When the compensation question was before the last legislature it was brought out most clearly that the mining employers looked with suspicion upon the putting of the agricultural industry into the class which was exempted, but which could elect to accept the provisions of the compensation law. Representatives of the miners asked many pointed questions at public meetings and elsewhere, and they took the very reasonable ground that they particularly desired the farmers to be included, especially as they were so powerful in the Legislature.

The mining fraternity ridiculed the idea that agriculture is so devoid of hazard as not to be considered in connection with legislation of this sort. They point out that the days of treading out the wheat with the ox or of threshing with a hand flail, when slow and comparatively safe agencies of animals and water supplied the power for agricultural pursuits, were past; that now the farmer digs post holes and plants trees with dynamite, plows with tractors and reaps with harvesters driven with gasoline or steam.

They point to the fact that the accident insurance companies which have the data and statistics of long experience, rate farming, with the raising and marketing of cattle, horses and sheep, as being almost on a par with mining for a high accident experience.

The Commission confesses that they can find no good reason for exempting agricultural pursuits and it therefore had included them in those to be covered.

They do, however, believe that the small farmer who operates with the help of his family and a very limited

amount of extra help at the harvest season should be permitted to choose his own method.

The Commission feels that few understand the liability they are now under and that in a short time all will be glad to take the protection of the compensation law which does not create a new liability, but merely regulates one that now exists.

They feel that the small and struggling farmer should have the option of deciding this question for himself, but they feel that the same privilege should be extended to the small miner, printer or lodging house keeper. Therefore, Section 9 exempts those employing less than four, thereby following the example of other States and extending the option to those who will most probably exaggerate the consequences to themselves from a pessimistic standpoint.

The bill also provides that if the employer elects not to operate under this Act, he shall not be allowed to defend himself on any one of the three grounds, first: That the employe was negligent; second: Assumption of risk by the injured party; third: Contributory negligence.

The Act is drawn so as to protect the employe by giving the employe the same preference against the assets of the employer as is allowed for in unpaid wages for labor, and no claim for compensation under the proposed Act is assignable, and such claim is exempt from the claims of creditors.

The provision of the Act covers all the employes of municipal corporations.

In Section 25 the Commission has borrowed from the Montana law with regard to retaining the well-established "hospital" or medical arrangement that now exists, particularly in the mining camps.

As the custom and arrangement seemed mutually satisfactory and to be without abuse, the Commission provided for the continuation of the present method, but with certain restrictions and a prohibition of any profit whatever to the employer over and above actual cost.

In Section 28 we find *the waiting period* which we recommended to be the usual fourteen days that the majority of the states have adopted.

It is interesting to note in this connection that Colorado, our nearest neighbor on the east, has a waiting period of three weeks, which is about the longest of any, while Nevada on our west side has only one week, which is almost the shortest of any.

Arizona, California and Montana have the period of two weeks, which is considered as being sufficient to discourage malingering and obviate the flood of small claims that would be inevitable from the smaller accidents.

Certainly it would be a thriftless provider who could not bridge over this short period and by omitting the trivial accidents a better provision can be made for those of more consequence.

Part Second pertains to:

Compensation Schedule.

Your Commission will not attempt to analyze this schedule. It, like the rest of the bill, and more particularly than any other part of the bill, will have to be read and studied. As above stated, the Commission has taken the provisions of this schedule from the laws of the majority of the other States.

There is one thing in this schedule that has occurred to a portion of your Commission since they prepared the bill, that it might be deemed unfair in relation to the compensation for total disability. They very much doubt that the provision, as they have it, which is, however, practically a copy of other laws, will prove satisfactory. It seems to your Commission that the amount to be paid in cases of *total disability* should be extended over a much greater period. Indeed, in justice to the employe, it should be for his whole life, but your Commission do not mean by this remark that the amount to be paid should be increased beyond a reasonable amount, but the amounts should be paid in smaller sums, after a time, each

week or each month and made to cover a greater length of time, and possibly this part of the schedule in extreme cases should be moderately increased.

We will close this section of our report by stating and showing that various communications have been received from employers, particularly those engaged in coal mining, calling attention to the disadvantage in a commercial way that will be put upon the Utah producers if the schedule is made larger than that of the adjoining states. The following is a brief statement of the schedules of Arizona, Colorado, Montana, Nevada, Wyoming, and Utah:

	TOTAL DISABILITY	PARTIAL DISABILITY	DEATH
Arizona	50% of average wages; maximum, $4,000.	50% of average loss of earning power; maximum $4,000.	Sum equal to 2,400 times ½ daily wages; max. $4,000. If no dependants, reasonable expenses of medical attention and burial.
Colorado	50% of average weekly wages; maximum, $8, to continue as long as disability is total.	50% of impairment of earning capacity; max. weekly $8; max. amount $2,080. Special schedule for loss certain members.	Maximum $2,500. If no dependants, burial expenses; max. $100.
Montana	50% of weekly wages; maximum weekly $10 for 400 weeks or $4,000, thereafter at $5 weekly while permanent disability lasts.	50% of impairment of earning capacity for 150 weeks, if permanent; 50 weeks if temporary. Special schedule for loss of members.	From 30% to 50%, according to kinship of dependants; max. weekly $10; max. period 400 wks. or $4,000. If no dependants burial expenses, max. $75.
Nevada	50% of average monthly wages; max. $60; max. period 100 months; max. amt. $5,000.	50% wage loss monthly; max. $40; max. period 60 months; special schedule for loss of members.	In all cases burial expenses; max. $125; 40% to 60%, max. amts. $4,000 and $5,000, and $6,000, according to number of dependants.
Wyoming	Lump sum of $1000 if unmarried. If dependants limit of $3,000.	Special schedule for loss of members.	In all cases burial expenses; max. $50. If dependants, amount $2000.
Idaho	Compensation law passed last Legislature, but vetoed on account of a too large appropriation.		
Utah	50% of average wages; max. weekly $12; max. amt. $4,000.	50% of impairment of earning capacity; max. weekly $12; max. amount $3,000.	Max. limit $3,000. If no dependants, burial expenses; max. $100.

From the above digest it will be seen that the Commission recommends a schedule that is between that of Colorado and Wyoming, and that of Nevada.

It was finally decided to leave the schedule as it is, realizing that it was impossible to attain more than general and approximate results for the initial law, and the Commission suggests that this and other apparently desirable phases be left to be adjusted by the Industrial Board, and for possible future amendment. In Section 77 the much discussed *Alien* question is dealt with by the recommendation of half benefits and other restrictions for which there are good reasons and examples among other States, such as Colorado, Montana and Kentucky.

Safety lies in the middle way and in beaten paths, and the Commission has been reluctant to recommend that Utah, in the beginning, should adopt features not generally in vogue.

The next or third part of the bill is entitled

Administration.

By it a Board of three persons is created to administer this statute, all to be appointed by the Governor, with quasi judicial powers. Their salaries and expenses are to be paid by the State as other state officers.

One of the first objections to this law will be that it increases the state expenses and adds a new burden to the people. Your Commission are inclined to believe that this is to a great extent a misconception. While it is conceded that the administration of this law is going to cost the State some money, it will not be as expensive on the people generally as one would at first think it would be. As it is today, and has been always, the injured unfortunates who cannot support themselves have been a burden on the public, or worse still, have been a burden on some particular part of the public, and most often on that particular part that is least able to bear it. By this statute or proposed law, this burden is simply shifted from a few to all. Society in the aggregate pays no more

money in the long run—it simply pays it as a whole in place of a part of it. Besides, this law will relieve the Courts of about one-fifth of their business, which will be a big reduction in the costs to the State. But whatever may be the cost to the State, this bill belongs to the class of legislation that the State will sooner or later have to enact if it attempts to keep pace with the demands of the public and with the advancement of its sister commonwealths.

Many plans have been discussed for the administration of the law by less than an industrial board of three, but your Commission are fully convinced that a less number would be ineffectual when the extent of territory to be covered and the scope of duties are considered. In fact, where any state has unduly limited the number of the commission, it has made up the cost in the number of secretaries, aides and assistants in different parts of the State, so there has been nothing gained in the point of economy to reduce the Commission below the number we have named. The Connecticut statute provides for four Commissioners, and as stated in Section 27 of its law:

"Each of said Commissioners shall receive a salary of $5,000 per annum, payable in equal monthly installments in like manner as the salary of a Judge of the Superior Court, and an allowance for reasonable and necessary expenses incurred in the discharge of his duties, including the services of a stenographer where necessary, not exceeding in all $600, to be taxed and allowed by a Judge of the Superior Court."

You will notice by this that they have fixed the salary the same as that given to the Judges of the Superior Court, and this is the general trend of all the legislation upon this subject. But bear in mind that most of the Judges of the Superior Court are Judges of general jurisdiction and not what is deemed appellate court.

In the report accompanying the Connecticut compensation law, the Commission say:

"In regard to the administrative parts of the bill, as the abolition of litigation, with its numerous disadvan-

tages, has been one of the main objects of the workmen's compensation movement, a bill which would not meet this necessity would probably not be satisfactory either to the employer or the employe."

We also call your attention to the report of the Tennessee Commission:

We will conclude this part of our report by stating that after carefully analyzing each bill that has come before your Commission, they have formulated the provisions of part three, mostly taken from the Indiana law, that we believe will be found sufficient to justly administer the provisions of the proposed act.

The next subject for consideration is the fourth provision of the bill. This is entitled

Insurance.

The main thing to be sought in this part of the bill is the absolute certainty that the injured party will receive the money that is promised him. We will say here, we believe that by observing the rules made by the bill we propose, no injured employe will lose the compensation guaranteed him under this proposed law. It will be observed we have not provided for any public insurance authorized and governed by the State. Your Commission are not inclined to recommend legislation providing for the State to enter into the private business of this character. The report of the Tennessee Commission deals very reasonably with this question. They say:

"We are in grave doubt whether the volume of business involved in the administration of a State Administered Compensation Fund in Tennessee would justify the large expense incidental to the establishment and operation of such a fund, with its elaborate machinery and expensive organization ramifying through every portion of the State.

"We adhere to the view, as a sound principle of our form of government, that the State should never embark in any form of business undertaking unless the reasons for it are so overwhelming as to amount substantially to an unavoidable necessity, and then only when it is obvious

that such business cannot be adequately or satisfactorily conducted under private initiative. It is certainly apparent that if this view be sound and if insurance of this character be considered a business, no justification can be found, certainly at this time and in this early stage of the development of workmen's compensation legislation, for state insurance in Tennessee.

"The circumstances surrounding a politically-administered business of this character are not such as to lend themselves to that efficient, economical and satisfactory management which is a prime necessity in the conduct of such an enterprise, and the potential danger of the use of such an organization for political purposes should not be overlooked.

"These being our views, we have decided not to recommend any form of State Insurance."

This same question is discussed by the "Labor World" of Pittsburg, Pa., a paper published in the interests of the laboring men. The editor says:

"History has proven that there is nothing more deceptive than reliance on laws affecting reforms in personal habit, business methods and industrial success. Whenever law has attempted to do for the people what the people can do for themselves, there has been disappointment all round; and, the curious fact about the matter has always been that those disappointed ones have not only failed to perceive the impotency of law in the case, but they have insisted on trying to remedy their disappointment by demanding 'more laws' as a means of bolstering up the previous law. In turn this 'bolstering' law has also disappointed, and then again the deceived people have once more clamored for still 'more law.' And so it has gone on and on. Each law designed to perform the duties of the people instead of making the way clear for the people to attend to their own affairs, has only incited stronger desires for more legislation.

"All of the foregoing leads to the question: Have the more or less monopolistic compulsory state compensation funds in Ohio, New York, Washington and West Virginia served the wage workers better, or as well as private companies could have done? We hold that they have not done so, even under handicaps imposed on the companies; and, to this answer we add the vital fact that

the law makes compensation just as certain under private companies as it does under the state fund, but there is no guarantee for expeditious operation under the state fund."

We might quote volumes on this point from different reports and bills throughout the states, but we deem it unnecessary, and we will conclude this part of our report by saying that we are opposed to state insurance, or indeed to any state interference with private business. No monopoly can be trusted. It makes no difference whether it is operated by a state or private individual. It can assume dictatorial terms and be uncompromising in its administration.

The fifth and last subdivision of the bill that your commission submit to you is Part V, entitled

Definitions and Miscellaneous Provisions.

This we need not discuss, as it is practically a copy of the Indiana law on this subject, and we might say a copy of most laws. We will state, however, that a provision is made for the payment of the expenses of the administration. Section 81 reads as follows:

"*Appropriation.* For the purpose of paying salaries and expenses of members of Industrial Board and its employes the sum of $25,000 a year, or as much thereof as may be necessary, is hereby appropriated out of any moneys in the State Treasury not otherwise appropriated."

Section 83 reads:

"Section 83. This Act shall take effect on July 1, 1917, except Part III, with the exception of Sec. 67, shall take effect upon approval."

Part III is the one in regard to administration, which would have to take effect at once, in order to make proper preparation; and Section 67 has reference to the reporting of accidents to the Board.

There are a few questions that are important in regard to this law to which your Commission feel they should refer. The first one is the question, "*Is such a statute necessary; what reason can we give for going to so great*

expense in substituting a statute of this sort for the ordinary liability of the employer to the employe? What will the public gain, or indeed what or who will be benefited? Above all, will the injured wage earner or his dependent wife and children get value received for that which he and they are yielding? These are questions that must be answered, and the latter must be answered in the affirmative, or the law will be a failure.

The main principle underlying this proposed statute is that the business in which the workingmen are engaged should assume the expenses of all accidents, whether it be for a broken wheel, a broken mandril in the machine, or the broken limb of an employe; that the latter is just as much a legitimate part of the expense of operating the business as the former. In other words, that all accidents should be deemed a part of the expense of the business or manufacturing establishments, and, like every other expense of such business, should be borne by the institution that operates it; and that in the last and final analysis, the public who use the product of such business, as it should do, will have to bear the burden of the expenses that such injury entails, which under the employer's liability laws heretofore resorted to by the injured employe, was wholly cast upon the employer and the families or neighbors of the unfortunate victims.

The first thought that this proposed law suggests to one having given no consideration to it, is that such a law may be denying the employe some important right, that it is taking away from him some valuable asset and is giving him in return something of less value. This thought comes from the fact that now and again some injured employe brings an action at common law and a jury awards the plaintiff a large sum of money, ranging from $2,000

to $10,000. The public hear of this exceptional case and are disposed to think that all injured employes are or can be likewise treated; that every injured employe has a good cause of action, and that all he has to do is to place his complaint before a court and jury and they will award him damages. The public do not understand, or if they do, they have forgotten, that there are many injured employes who bring suits and get but little. Still a greater number of cases have no cause of action, and they are not entitled to any consideration. It is certainly not generally understood that only about ten or twelve per cent of the injured employes ever receive compensation as a result of a suit at law, and that at least fully one-third, if not one-half, of this compensation is lost in litigation; nor is it generally understood, but it is an established fact, that about 50 per cent of all accident cases are caused from the risk of the business, and that about 26 per cent of the accidents take place through the negligence of the employe himself; that about 12 per cent are by the negligence of a fellow servant or the employe and employer together, leaving about 12 per cent that happens through the negligence of the employer alone. It would, therefore, be readily conceded that 50 per cent, or thereabout, of the accidents are caused through no one's fault, but through the necessary risk of the business In this connection your Commission will take the liberty of referring to the very able address of the Honorable George Sutherland before the United States Senate. Senator Sutherland in that address quotes from a speech of Mr. Boyd, who is at the head of the Ohio Commission, and who has given this matter of the workmen's compensation law a most thorough investigation. In summing up his argument on the question of the necessity for some such a law, Mr. Boyd says:

"The United States employer's liability act, which practically did the same thing and introduced a new doctrine, the doctrine of comparative negligence as between the employer and the employes, so that the historical evolution of the problem itself shows that the common-law remedy is a failure; you cannot adjust the matter by modifying the common-law defenses or taking away the common-law defenses. Now, the investigations of New York State, of Ohio, of Illinois, and the Russell Sage Commission, and the Allegheny Committee of Pittsburg, Pa., show the following results:

"In New York State, on an average, a workman during the last eight or ten years recovered in something like 12 per cent of the cases. That is, where there were 414,000 accidents reported the liability insurance companies, something or other was paid in 52,000 of them, or about one case in eight.

"In Ohio, in the settlement of 65,800 cases in Cuyahoga County in a period of about eight years, something was paid in less than 6 per cent of the cases, and in Illinois something was paid in eight per cent of the cases.

"Now, if you take the economic operation of the German insurance acts, which in 1887 had 4,000,000 employes under them and today have 27,000,000 workmen and their dependents insured against the loss of wages arising out of industrial accidents, you can attribute on the average only 18 per cent of the cases to the negligence of the employer and about 28 per cent of the accidents to the negligence of the employes, while in 44 per cent of the accidents the causes are due to the natural, inevitable risks of the business and 10 per cent to the combined negligence of the employer and the employe."

From this quotation, it would seem pretty conclusive that only about one-tenth of the personal injury cases are ever heard in court, and about one-half of these recover damages.

Speaking further from the Germany insurance statistics, which are about the same as in the United States, they show that:

The percentage of accidents that are due to the negligence of the employer was about 20.47 per cent; that those due to the negligence of the employe 26.56 per cent; due to the negligence of both parties, 8.01 per cent; due

to inevitable risks of the industries and other causes, 44.96 per cent. That was the experience in 1887. In 1897, ten years later, the statistics showed that the injuries due to the negligence of the employer were 17.30 per cent; of the employe 39.44 per cent; of both parties, 10.14 per cent; and due to the inevitable risks of the industries, 42.82 per cent. Ten years later the statistics showed that the employer was guilty of 16.91 per cent; the employe, 28.90 per cent, and both parties 9.94 per cent, and due to the inevitable risk of the business, 44.36 per cent.

It would seem from what your Commission have stated and from what your Commission have quoted above, that the proposition above mentioned in relation to fairness of this bill to the employe is beyond question, and that some law, some rule of conduct to meet the problem of workmen's compensation for accidents is necessary.

The next point in this particular subject and in connection with it, is how do the workingmen themselves feel about this matter. To start out with, it must be borne in mind that the law is in the nature of an accident insurance to them. It is a compromise on both sides. No one of the injured workmen know whether he will be injured, and if he is, whether he will be one who will receive a large verdict at the hands of a jury after years of litigation, or whether he will be one of the 90 per cent who never get anything. Besides this, the workman with total disability receiving from $2,000 to $10,000, or the representatives of a deceased from $3,000 to $8,000, must bear in mind that about one-half of this amount is wasted in litigation, even if he is one of those who are injured solely on the ground of his employer's negligence. So the sums to be finally recovered are not so different between the maximum amount given in the workmen's compensation and the amount that is realized by the most fortunate litigant under the old system. From the working-

men's standpoint and the employer's interest, there can be no question about the benefit to the workingmen as a general proposition. This has been realized by most unions, and most all of the heads of organized labor. The Honorable George Sutherland in his United States Senate speech refers to this fact, and makes the following statements, which we are again taking the opportunity and liberty of quoting:

"First of all, I call attention to the statement of Mr. W. G. Lee, who is president of the Brotherhood of Railroad Trainmen of the United States. Mr. Lee came before the commission and spoke for that entire membership of over 100,000 railroad trainmen.

"Mr. Lee says:

" 'I wish to go on record at this time as unqualifiedly favoring a workmen's compensation act as a result of resolutions passed by the last two biennial conventions of our organizations. Just what form will be most satisfactory to both employer and employee is a question, but we believe that as far as possible litigation should stop as between the employee and employer. We believe that whatever money is disbursed by the employer should go to those disabled and not a large proportion or percentage to attorneys or others, as is the case at present.'

"Mr. Sines, who was the Vice-President and Treasurer of the Railroad Trainmen, indorsed the bill in language as follows:

" 'I want to say to you, gentlemen, that from the standpoint of my organization, although we believe and feel that the provision, in so far as it covers the number of years is concerned, should be extended, it will have the support of my organization as an organization.'

"Mr. Garretson, President of the Order of Railway Conductors, representing 48,000 men, indorsed the bill as follows:

" 'I am willing to surrender my broader ideas in regard to many of those provisions, and to give, along with the organization which I represent, cordial support to the report of the commission as it will be formulated.' "

In the same speech of Honorable George Sutherland, he quotes Mr. W. E. Stone, Vice-President of the Brotherhood of Locomotive Engineers, representing 69,739 men, in these words:

"Speaking as the chief executive of the engineers, I want to say that your bill is going to have the support of the Brotherhood of Locomotive Engineers. We are going to do everything we can to have it enacted into law."

Mr. Arthur E. Holder, legislative representative of the American Federation of Labor, representing 60 per cent of the railroad men of the country, had been sent to England prior to the consideration of this question, and after devoting some time to the study of the question, returned to this country, and before the Commission made the following statement:

"In the first place, I want to say that the men who I, directly and indirectly, represent, want the compensation principle established. We are not going to be too insistent upon conditions. We believe that it is one of the growths of civilization, one of the advanced movements to protect humanity, and we believe that when this principle is once established in the United States that it will not be long before the intelligence of the people will find all the ways needed to make the act applicable to every requirement. It is not for the sake of getting pelf or money that we want the compensation principle established; that is a secondary point. We want the principle established, Mr. Chairman, for the sake of saving pain and suffering and unnecessary neglect, that we think that in this advanced age of the twentieth century there is little occasion for. And we hope that by the penalties attached to a compensation bill many hands and many feet may be left upon men, who might otherwise be unnecessarily maimed."

Mr. Gompers, who is President of the American Federation of Labor, appeared before the Commission, and the Honorable George Sutherland quotes him as follows:

"I would rather see all who were injured and their dependents fairly cared for than to have one get a large verdict or a large amount and the remainder fritter away their time in litigation."

In the report upon the operation of the state compensation laws by the American Federation of Labor, dated in the year 1914, the commission makes this statement on page 21:

"The introduction of workmen's compensation laws has opened the way for the establishment of more amicable relations between employers and employes. In their operation, the acts necessarily provide an opportunity for workmen and employers to meet and consider questions relating to compensation and accident prevention. Indirectly, these meetings, promoting as they do acquaintanceship between employers and workmen, lead to the discussion of other questions which affect their common interest. As a consequence, many of the causes of misunderstanding which arose because of the failure of the two sides to confer have been removed, and a better and mutually advantageous relationship has been established.

"Under the old system the litigation growing out of industrial accidents led to discord and friction, with injurious consequences which could not be calculated. The tendency was distinctly to drive the employer and the employe farther apart. In contrast to that system, the operation of compensation laws has tended to bring about a community of interest and a difference in sentiment that has improved even the trade relationship. Compensation in an industry has been a benefit to the whole of it and all engaged in it."

In conclusion of the above subject, your Commission think they can say without hesitation and without successful contradiction that the laboring unions and the laboring men are in favor of the compensation principle, and your Commission do not think it necessary to enter more fully into discussion on this particular part of the subject.

The next important question that we have to discuss, and it will be done very briefly, is the one that naturally would follow the question of the workmen's consideration of this law, and that is, how is it going to affect the employers and how is it going to affect their business, what is their attitude toward it, why should the

employer accept this somewhat additional burden—additional burden, at least, in the early periods of its workings?

In addition to what we have heretofore stated in relation to this law being advantageous to the employers, we can say in a general way that we are prepared to sustain the following propositions. We believe that the employers can well afford to accept the provisions of the Compensation Act. We believe that it is far ahead of the Employer's Liability Act. Under the latter when the matter of the injured employe comes before the court, practically all the common law defenses of the employer are modified and some of them entirely removed, and the employer was, and is almost helpless before a jury of men whose sympathies are bound to be against the employer and in favor of the injured employe. When a workman is injured, the sympathy of the whole shop where he is employed is aroused; it is against the employer and in favor of the injured party. There is a good deal of doubt whether or not under this condition of things, the workmen who are not injured can give efficient service with the feeling that they have, half antagonistic and half hate against the employer who is possibly their best friend. There is a mutual distrust between the employer and the employe. This bill seeks to remove this difficulty. It endeavors to settle this class of cases in a friendly way, each one yielding something and both in the long run being benefited. Your Commission can conscientiously say that they believe that if there is no other benefit to the employer obtained from this bill than the fact that it is a help to smooth the way to better feelings and more confidence between employer and employee, it is sufficient to justify the extra expense that the employer will have to pay.

In concluding this report we will truly say that when we started an examination of the matter of the Workmen's Compensation Act, we had very grave doubts of its feasibility. We doubted the justice of the measure, both as to the employe and to the employer. But we can truly say, the more we have examined the principle on which this proposed law is based, the more we are convinced that it is a proper step towards the solution of one of the most vexed problems of our present civilization. Of course, the two most important features of this bill, or any bill of this character are: First, is the schedule for injuries just to the workingmen; second, is the manner of collecting the dues just to the employer? All the rest of the law is simply machinery—it is simply means to an end.

Referring to the matter of the Board, whose duty it is to administer this law, we doubt somewhat the wisdom of limiting them in their powers in the matter of the schedule as we now have it. We believe the time will come when this schedule of prices will be modified and practically be done away with. We believe the time will come when the Board will have power to say to one employe who has lost a foot, that he will receive so much, and to another employe, who has had the same trouble, that he will receive so much; it may be an increase or a decrease. The former may be a man with a wife and one child; the latter may have a wife and ten children. The former may not be so disabled after his recovery that he cannot enter his former occupation. The latter may be so disabled that he cannot perform his former duties. That these two classes of cases should be treated just alike seems anything but just. We might make many illustrations of this kind, but it is not necessary.

As we have stated above, this is a step in the right direction. It may not meet all the wants of the workingmen, and it may not cover all the demands of the employer. But we can say truly that we do not expect to recommend a law on this subject, or indeed on any other subject, that is perfect or nearly so. As time goes on, however, it can be amended and modified to meet the wants of society.

We turn this proposed law over to the members of the Legislature, and the members-elect, with the hope that it will pass, practically as it is, to form a broad, firm foundation for this necessary legislation, not claiming, as aforesaid, that it is perfect, but considering the law, as recommended, as conservative, reasonably considerate of all parties and sufficient for present initiatory needs.

Very respectfully,

DON B. COLTON, Chairman

LE GRAND YOUNG

IRA R. BROWNING

H. B. WINDSOR

R. C. GEMMELL

CHARLES H. PEARSON

.....

Salt Lake City, Utah, November 1st, 1916.

REPORT OF H. K. RUSSELL

Member of the Utah Employers' Liability and Workmen's Compensation Commission.

To the Honorable the Governor, and the Members and Members-elect of the Legislature of the State of Utah, the Year 1917.

Ladies and Gentlemen:

On March 1, 1916, I had the honor to be appointed by Governor William Spry as a member of a Commission to Inquire into the Question of Employers' Liability and Other Matters, pursuant to an act passed by the 1915 session of the Utah Legislature. The Commission was composed of the following: Senator Don B. Colton, Representative Ira R. Browning, Le Grand Young, R. C. Gemmel, H. B. Windsor, Charles H. Pearson and H. K. Russell.

The Commission had several meetings in Salt Lake City and discussed the laws of the States which have Employers' Liability and Workmen's Compensation measures in operation.

During these meetings there developed a wide difference of opinion among the members of the Commission regarding several important matters pertaining to compensation laws, but the majority of the Commission finally agreed on the proposed law which is submitted and signed by the major portion of this Commission.

The entire Commission was agreed that the principle of a compensation law is just and that a law of this nature should be on our statute books. I personally concur in this view of the matter.

But I have not signed the report submitted by a majority of the Commission, for several reasons, and I am herewith submitting in a brief manner my objections and

exceptions to the proposed law. It seems to me that the working men and women should have had more consideration given them than has been accorded them in this measure, and for that reason I cannot conscientiously sign the majority report, although I hope to see a compensation law enacted by your honorable body which will accomplish the results for which laws of this nature were intended—a law which will be absolutely fair to all concerned.

During the sessions of the Commission I endeavored to have incorporated into the proposed law some features which seemed to me to be just and reasonable, but the majority did not concur in my views and they were not accepted. In this report I will touch on these features briefly, as I do not deem it necessary to submit a great mass of figures and reading matter for your consideration. However, I believe these features should be written into the Utah compensation law, and will leave it to your sense of justice and fairness to decide.

Exceptions.

I cannot agree with the majority of the Commission on the following sections of the proposed law, and in my opinion, to be just and fair, they should be amended:

According to Section 9, this Act shall not apply to those regularly employing less than four, except in the case of State or Municipal corporations. In my opinion, if a workman is injured or killed during the course of his employment, he or his dependents should receive the benefits of the compensation law, and I can see no good reason to deny them these benefits simply because his employer did not regularly employ five or more. If a workman working for the same employer with three other workmen is injured, why should he not receive compensation just the same as if there had been four others working with him at the time? The only argument against this is that other States make exceptions in this

case. Nevertheless, I can see no good reason for making this exception, and I believe it should be amended to read so that the injured or killed workman should receive the benefits of the law even though he be the only workman regularly employed. There may possibly be some good reason for excluding casual employes in the service of employers who have only such employes, but even in that case I believe the policies could be so drawn as to include casual as well as regular employes.

Section 25 provides that during the first thirty days after an injury the employer shall furnish, free of charge, "in the absence of a medical and 'hospital' contract or agreement," an attending physician and such surgical and hospital service and supplies as may be deemed necessary. Section 26 limits the amount to be paid by the employer to $100, "and may be abrogated entirely by mutual agreement between employers and employes," etc. Subsection (b) of Section 26 then allows employes to be assessed $1 per month for each employe, or even more in certain cases. It appears to me that if the law is adopted as it reads, the injured employes will not receive free medical or hospital attendance in many cases. All that will be necessary for employers who do not wish to pay for this service to do will be to inform their employes they wish to draw up a "medical and hospital contract." In that case there will be nothing for the employes to do but to agree to this plan, and the result will be that the employes will have to pay $1 a month each, which in any case is too large an amount. Therefore, I believe this portion of the proposed law would be much more satisfactory and fair if it should simply state that the employer should be required to furnish necessary medical, surgical and hospital services and supplies for a reasonable period (to be determined by the Industrial Board), and that the Board should be empowered to establish a

schedule of physicians' and hospital fees and to control all such charges.

Waiting Period.

Section 28 provides that the waiting period (the time which must elapse before an injured workman is entitled to compensation), shall be fourteen days. The majority report says:

"Certainly it would be a thriftless provider who could not bridge over this short period, and by omitting the trivial accidents a better provision can be made for those of more consequence."

I cannot agree with the majority that an accident which would cause a workman to be absent from his work for a period of time approaching two weeks is a trivial one. A trivial accident would possibly be one which would cause him to remain away from his work two or three days. Some corporations even now pay their employes who might be injured their full wages should they be absent from their work only one day, and yet it is proposed that a workman must be incapacitated for over two weeks before he is entitled to one-half of his average wages. To my mind this is a very unjust provision in this proposed law, and one which I cannot possibly agree with. In my opinion the waiting period should be not longer than three days in any case, and in some cases it should begin with the disability of the workman. Several States have a waiting period of from three to seven days, among them being Illinois, Louisiana, Maryland, Nevada, Ohio, Texas, West Virginia, Wisconsin, and also the United States law. Some have no waiting period at all, among these being Oregon, Washington and also Porto Rico. I think three days should be ample.

Compensation.

In computing the compensation to be paid under this Act, it is provided that an amount of 50 per cent of the employes' wages shall be paid, with a maximum of $12 per week and a minimum of $5 per week. It is my opinion that 50 per cent is too small an amount. This is recognized by many States, which have incorporated in their laws amounts ranging from 66 2-3 to 65 per cent. The maximum should also be raised to $15 instead of $12.

Total Disability—Section 29 provides that 50 per cent shall be paid for 333 1-3 weeks. Under this section the greatest amount which would be received by a workman, even if incapacitated for the balance of his life, and no matter what his earning power may have been, would be $4,000, after which he would have to depend upon the charity of someone until death relieved him. The minimum amount to be paid under this section would be $1,666. In my estimation this amount is too small. Twenty-three other States are allowing larger amounts. I would suggest the amount be regulated so that the workman totally disabled receive 65 per cent of his wages until he receive $4,000, then 40 per cent for the balance of his life.

Partial Disability and Permanent Partial Disability —Sections 30 and 31 should be made to conform to Total Disability, so that the injured workman receive 65 per cent instead of 50 per cent.

Death—Section 37 provides that 50 per cent shall be paid to dependents for 250 weeks; maximum, $12 per week; minimum, $5 per week. Under this section, the greatest amount which would be paid for the death of a workman would be $3,000; the smallest amount, $1,250. Think of it—from $1,250 to $3,000 for the death of a workman killed through the carelessness of another per-

son. In my opinion it is absolutely ridiculous and out of all proportion with judgments rendered in the past by courts in like cases. As far as I have been able to determine, but two States have a smaller maximum than $3,000—Colorado and Wyoming. Several others pay a like amount. At least thirteen States have a maximum greater than $3,000. Included in the latter are: Arizona, $4,000; California, $5,000; Nevada, $4,000 to $6,000; Texas, $5,400; Montana, $4,000. From these figures, it appears to me that a $3,000 maximum for Utah is entirely too low. Wages paid in this State are as high as any of the surrounding States mentioned, and higher than some others, and in view of this fact, I am of the opinion workmen and their dependents should receive at least an equal amount of compensation. I, therefore, would recommend the Utah law provide compensation for dependents of deceased workmen in a sum of not less than $2,000 as the minimum and $5,000 as the maximum.

Aliens—Section 77 provides that aliens and their dependents shall be entitled to only one-half benefits. I am not in accord with this idea, as I believe it can have but one effect—the discrimination against American workmen in favor of aliens I therefore am of the opinion that the same compensation should be paid to aliens and their dependents as are paid to others under this law.

Insurance.

As to the advisability of establishing a State insurance fund, operated and governed by the State, considerable discussion was had by the Commission, the majority finally deciding to recommend that the Utah law do not provide for State insurance. Personally I am not convinced that a State fund would not be the best method to adopt. In fact, it seems to me it would be a good business proposition for the State. If private insurance com-

panies can make money by insuring employes against accident and death, why cannot the State do the same thing? The argument was put forth that in case of a great catastrophe the State fund would be bankrupt and the workmen and their dependents would not receive payment in full on their claims. But it seems to me the State would be as likely to be able to pay these claims as private companies. From information at hand, the State funds in California, Wyoming and Pennsylvania, at least, are very successful, and would appear to be a paying business proposition. It seems to me this phase of the law should receive a thorough investigation before a final decision is made.

Occupational Diseases.

As to occupational diseases, the proposed law does not provide any compensation. In fact, in Subsection (d) of Section 76 it provides that "injury" and "personal injury" shall not include a disease in any form except as it shall result proximately from the injury.

It is my opinion a great mistake has been made in not including occupational diseases in this proposed law as a cause for receiving compensation. There are, of course, some instances where employes contract disease and die, through no fault of the employer, who does everything he can to have the best conditions possible under which his employes may work. In this case the employer should not suffer. But, on the other hand, there are many instances where employes are compelled to work under filthy and unsanitary conditions, which could be remedied by the employer by the expenditure of a few dollars; but by reason of his negligence and his refusal to provide sanitary conditions, his employes, through force of circumstances, are compelled to work under these conditions and contract tuberculosis and other dread diseases,

finally succumbing to the ravages of these diseases, leaving their dependent ones penniless in many cases, and naturally they become public charges. The majority of the Commission did not deem it necessary to make any provision in the proposed law for these unfortunate workers, and I now wish to earnestly ask that a provision be incorporated in the law which will compensate those who contract disease by being compelled to work under unsanitary conditions. I would recommend that Subsection (d) of Section 76 be amended to so read that it will include those contracting diseases arising out of and in the course of employment.

Accident Prevention.

The proposed bill makes no provision for the prevention of accidents, and in this it seems to me the bill is faulty. I would suggest a portion of the bill be devoted to this subject, dealing with the safety of places and conditions under which employes are compelled to work, and vesting the Industrial Board with power and jurisdiction over every employment in the State as may be necessary to enforce and administer the law so that all places of employment shall be made safe and healthful and the lives of workmen be protected as far as possible. The Board should have power to declare what safety devices must be used in certain employment, and also to enter such places of employment at all reasonable times to see that such safety and sanitary devices are properly installed and in use. I respectfully refer you to the Montana law on this subject.

The foregoing are some of the reasons submitted as being grounds why I decline to sign the report of the majority of the Commission. I respectfully submit them for your earnest consideration.

Very respectfully,

H. K. RUSSELL.

Salt Lake City, Utah, November 1, 1916.

The Commission desires to express their appreciation to the various persons who are mentioned in the foregoing report, and also to the following for valuable assistance rendered:

H. G. Williams, Salt Lake City, Utah.
Utah Fuel Company.

Geo. S. McAllister, Salt Lake City.

R. W. Eardley, Salt Lake City, Utah.
Manufacturers Association of Utah.

Geo. Sutherland, Washington, D. C.

John D. Pringle, "The Labor World," Pittsburg, Pa.

John Dern, Salt Lake City, Utah.

P. Tecumseh Sherman, New York.

F. Robertson Jones, New York.

Judge George B. Armstrong, Salt Lake City.
Mr. Newcomb Cleveland, Denver, Colo.

Prof. Geo. A. Eaton, Salt Lake City.

Mr. John B. Andrews, New York City.
American Association for Labor Legislation.

Mr. Royal Meeker, Washington.
Bureau of Labor Statistics.

Mr. A. W. Whitney, New York.

National Workmen's Compensation Bureau.

Mr. Edson S. Lott, New York City.

Mr. John T. Stone, Baltimore, Md.

Mr. F. Highlands Burns, Baltimore, Md.

Mr. E. J. Bond, Baltimore, Md.

Mr. Alroy S. Phillips, St. Louis, Mo.
Compensation Commission of Missouri.

Mr. C. W. Clausen (Auditor), Olympia, Wash.
State Industrial Dept.

Mr. Walter G. Cowles, Hartford, Conn.

Judge Morris L. Ritchie, Salt Lake City.

Mr. A. T. Skerry, New York City.

John M. Hayes, Salt Lake City, Utah.

TEXT OF THE TENTATIVE LAW.

An Act to promote the prevention of industrial accidents; to cause provision to be made for adequate medical and surgical care for injured employees; to establish rates of compensation for personal injuries or death sustained by employees in the course of employment; to provide methods for insuring the payment of such compensation; to create an Industrial Board for the administration of the act and to prescribe the powers and duties of such board.

PART I.

RIGHTS AND REMEDIES.

Be it enacted by the Legislature of the State of Utah:

Section 1. That this act shall be known as "The Utah Workman's Compensation Act."

Sec. 2. From and after the taking effect of this act, every employer and every employee, except as herein stated, shall be conclusively presumed to have accepted the provisions of this act respectively to pay and accept compensation for personal injury or death by accident arising out of and in the course of employment, and shall be bound thereby, unless he shall have given prior to any accident resulting in injury or death notice to the contrary in the manner hereinafter provided; and a like presumption shall apply to such deceased persons, legal representatives, next of kin and dependents, unless they give notice of their intention otherwise within thirty days after the death of such deceased in the manner prescribed in the next section.

Sec. 3. Either an employer or an employee, who has exempted himself, by proper notice, from the operation of this act, may at any time waive such exemption and thereby accept the provisions of this act by giving notice as herein provided.

The notice of exemption and the notice of acceptance heretofore referred to shall be given thirty days prior to any accident resulting in injury or death, provided that if any such injury occurred less than thirty days after the date of employment, notice of such exemption or acceptance given at the time of employment shall be sufficient notice thereof. The notice shall be in writing or print in a substantial form prescribed by the Industrial Board and shall be given by the employer by posting the same in a conspicuous place in the plant, shop, office, room or place where the employee is employed, or by serving it personally upon him: and shall be given by the employee by sending the same in a registered letter addressed to the employer at his last known residence or principal place of business; or by giving it personally to the employer, or any of his agents upon whom a summons in civil action may be served under the laws of the State.

A copy of the notice in prescribed form shall also be filed with the Industrial Board.

Sec. 4. Every contract of service between any employer and employee covered by this act, written or implied, now in operation or made or implied prior to the taking effect of this act, shall, after this act has taken effect, be presumed to continue; and every such contract made subsequent to the taking effect of this act shall be presumed to have been made subject to the provisions of this act, unless either party shall give notice, as provided in Section 3, to the other party to such contract that the provisions of this act other than Sections 6, 10, 11 and 67 are not intended to apply.

A like presumption shall exist equally in the case of all minors unless notice of the same character be given by or to the parent or guardian of the minor.

Sec. 5. Every employer who accepts the compensation provisions of this Act, and complies with the provisions hereof, or those conducting his business, shall only be liable to any employee for personal injury, or, in case of his death, to his personal representatives, dependents or next of kin, to the extent, and in the manner, herein specified, except as otherwise provided.

Sec. 6. The rights and remedies herein granted to an employee, subject to this act, on account of personal injury, and in case of his death by accident, to his personal representatives, dependants, or next of kin, accepting the benefit of this act, shall exclude all other rights and remedies of such employee, his personal representatives, dependants, or next of kin at common law, or otherwise, on account of such injury or death; provided, however, that in case of death the personal representatives, next of kin and dependants, as hereinafter defined, in lieu hereof, may have a right of action against such employer, and the amount recoverable shall not be subject to any limitation; but in such action, the employer shall have the right of all common law defenses without modification, as provided in Section 11 of this Act, provided, also, that in the event of death of an employee, resulting from accident, if any of the personal representatives, next of kin or dependents of the deceased, elects to sue for damages, there shall be no right to compensation under this Act in favor of the person or persons bringing such action.

Sec. 7. Nothing in this act shall be construed to relieve any employer or employee from penalty for failure or neglect to perform any statutory duty.

Sec. 8. No compensation shall be allowed for an injury or death due to the employee's wilful misconduct, including intentional self-inflicted injury, or unjust attempt to injure another, intoxication, and wilful failure or refusal to use a safety appliance or perform a duty required by statute. This provision as to intoxication shall not apply, if the employer knew or in the exercise of ordinary care might have known that the employee was intoxicated or that he was in the habit of becoming intoxicated.

The burden of proof shall be on the defendant employer.

Sec. 9. This Act, except Section 67, shall not apply to casual laborers, to those regularly employing less than four (except in the case

of State or Municipal Corporations, as provided in Section 18), in the same industrial employment for the sake of pecuniary gain, or to private household or domestic servants, or to employers of such persons; unless such employees and their employers voluntarily elect to be bound by this Act and the employer files with the Industrial Board notice of such election.

Sec. 10. Every employer who elects not to operate under this act shall not in any suit at law by an employee to recover damages for personal injury or death by accident be permitted to defend any such suit at law upon any one or all of the following grounds:

(a) That the employee was negligent;

(b) That the injury was caused by the negligence of a fellow employee;

(c) That the employee had assumed the risk of the injury.

Sec. 11. Every employee, and the personal representatives, dependents or next of kin of any deceased employee, who elects not to operate under this act, in any action to recover damages for personal injury or death brought against an employer, accepting the compensation provisions of this act, shall proceed at common law, and the employer may avail himself of all defenses, including contributory negligence, negligence of fellow servants and the assumption of risk, as such defenses exist at common law.

Sec. 12. When both the employer and employee elect not to operate under this act, the liability of the employer shall be the same as though he alone had rejected the terms of this act, and in any suit brought against him the employer shall not be permitted to avail himself of any of the common law defenses cited in Section 11.

Sec. 13. Whenever an injury for which compensation is payable under this act shall have been sustained under circumstances creating in some other person than the employer a legal liability to pay damages in respect thereto, the injured employee may at his option either claim compensation or proceed at law against such other person to recover damages or proceed against both the employer and such other person, but he shall not collect from both; and if compensation is awarded under this act the employer having paid the compensation or having become liable therefor, may collect in his own name or that of the injured employee from the other person in whom legal liability for damages exists, the indemnity paid or payable to the injured employee. Any damages paid by such other person shall be off-set against and deducted from the employees' claim against the employer under this Act, and any waiver by the employee of his right of action against such other person, made without consent of the employer, shall operate as a waiver of all claim under this Act against the employer.

Sec. 14. Every contractor, whether principal, intermediate or subcontractor, shall be liable for compensation to any employee injured while in the employ of any one of his sub-contractors and engaged upon the subject matter of the contract, to the same extent as the immediate employer.

Any principal, intermediate, or sub-contractor who shall pay compensation under the foregoing provision may recover such amount paid from any person who would have been liable to pay compensation to the injured employee.

Every claim for compensation under this section shall in the first instance be presented to and instituted against the immediate employer, but such proceeding shall not constitute a waiver of the employee's rights to recover compensation under this act from the principal or intermediate contractor, provided that the collection of full compensation from one shall bar recovery by the employee against any other, nor shall he collect from all a total compensation in excess of the amount for which any of the said parties are liable.

This section shall apply only in cases where the injury occurred, on, in or about the premises on which the principal contractor has undertaken to execute work or which are otherwise under his control or management.

Sec. 15. No contract or agreement, written or implied, no rule, regulation or other device, shall in any manner operate to relieve any employer in whole or in part of any obligation created by this act except as herein provided.

Sec. 16. All rights of compensation granted by this act shall have the same preference or priority for the whole thereof against the assets of the employer as is allowed by law for any unpaid wages for labor.

Sec. 17. No claim for compensation under this act shall be assignable, and all compensation and claims therefor shall be exempt from all claims of creditors.

Sec. 18. The provisions of this act shall apply to employees (other than officials as hereinafter defined) of the State and all counties, cities, towns and other public corporations within the State.

Policemen and firemen and others entitled to pensions shall be deemed employees within the meaning of this act. If, however, any policeman or fireman or other person entitled to a pension claims compensation under this act, there shall be deducted from such compensation any sum which such policeman or fireman or other person may be entitled to receive from any pension or other benefit fund to which the State or municipal body may contribute.

Sec. 19. This act except Section 67 shall not apply to employees engaged in interstate or foreign commerce, nor to their employers, in case the laws of the United States provide for compensation or for liability for injury or death by accident of such employees.

Sec. 20. Every employer and employee under this act, except as provided in Section 19, shall be bound by the provisions of this act whether injury by accident, or death resulting from such injury, occurs within the State or in some other state or in a foreign country, provided that the contract of employment was made in this State and contemplated work, labor or service to be performed either generally with-

in this State or in direct connection with some establishment or office in this State.

Sec. 21. The provisions of this act shall not apply to injuries or death or to accidents which occurred prior to the taking effect of this act.

PART II.

COMPENSATION SCHEDULE.

Sec. 22. Every injured employee or his representative shall immediately upon the occurrence of an injury or as soon thereafter as practicable, give or cause to be given to the employer written notice of the injury and the employee shall not be entitled to physician's fees or to any compensation which may have accrued, under the terms of this act, prior to the giving of such notice; unless it can be shown that the employer, his agent or representative had knowledge of the injury or death, or that the party required to give such notice had been prevented from doing so by reason of physical or mental incapacity or the fraud or deceit of some third person, or for equally good reason; but no compensation shall be payable unless such written notice is given within thirty days after the occurrence of the injury or death, unless reasonable excuse is made to the satisfaction of the Industrial Board for not giving such notice.

Sec. 23. The notice provided in the foregoing section shall state in ordinary language the name and address of the employee, the time, place, nature and cause of the injury or death, and shall be signed by the employee or by a person on his behalf, or in the event of his death by any one or more of his dependants or by a person on their behalf, or may be sent direct to the Industrial Board.

No defect or inaccuracy in the notice shall be a bar to compensation unless the employer shall prove that his interest was prejudiced thereby, and then only to the extent of such prejudice.

Said notice shall be given personally to the employer or any of his agents upon whom a summons in civil action may be served under the laws of the State, or may be sent by registered letter addressed to the employer at his last known residence or principal place of business.

Sec. 24. The right to compensation under this act shall be forever barred unless within one year after the injury or if death results therefrom, within one year after such death, a claim for compensation thereunder shall be filed with the Industrial Board.

Sec. 25. During the first thirty days after an injury the employer shall furnish or cause to be furnished free of charge, in the absence of a medical and "hospital" contract or agreement as hereinafter provided, to the injured employee, and the employee shall accept, and during the whole or any part of the remainder of his disability resulting from the injury, the employer may, at his own option, continue to furnish or cause to be furnished, free of charge, in the absence of a medical

and "hospital" contract or agreement as hereinafter provided, to the employee, and the employee shall accept, an attending physician, unless otherwise ordered by the Industrial Board, and in addition such surgical and hospital service and supplies as may be deemed necessary by said attending physician, or the Industrial Board.

The refusal of the employee to accept such service when provided by the employer shall bar said employee from further compensation until such refusal ceases, and no compensation shall at any time be payable for the period of suspension unless in the opinion of the Industrial Board the circumstances justify the refusal, in which case the Board may order a change in the medical or hospital service, and may allow the withheld compensation.

If in an emergency on account of the employer's failure to provide the medical care for the first thirty days, as herein specified, or for other good reason, a physician other than that provided by the employer is called to treat the injured employee during the first thirty days, the reasonable cost of such service shall be paid by the employer subject to the approval of the Industrial Board.

Sec. 26. The pecuniary liability of the employer for medical, surgical and hospital service herein required shall be limited to such charges as prevail in the same community for similar treatment of injured persons of a like standard of living when such treatment is paid for by the injured person, in no case to exceed $100, and may be abrogated entirely by mutual agreement between employers and employees providing for medical and "hospital" benefits and accommodations to be furnished to the employee which shall include the service required in this bill and be extended according to such mutual agreement, subject to the following conditions and requirements:

(a) Such hospital contract or agreements must provide for medical, hospital, and surgical attendance for such employee for sickness contracted during the employment, as well as for injuries received arising out of and in the course of the employment, except venereal diseases and sickness or injury as a result of intoxication.

(b) No assessment of employees for such hospital contracts or benefits shall exceed $1 per month for each employee, except in cases where it shall appear to the satisfaction of the board, after a hearing had for that purpose, that the actual cost of such service exceeds the said sum of $1 per month, and any such finding of the board may be modified at any time when justified by a change of conditions or otherwise, either upon the board's own motion or the application of any party in interest.

(c) No profit, directly or indirectly, shall be made by any employer as a result of such hospital contract or assessments. It is the purpose and intent of this act to provide that where hospitals are maintained by employers such hospitals shall be no more than self-supporting from assessment of employees, and that where hospitals are maintained by other than the employer, all sums due such hospital for ser-

vices rendered, and derived by assessment of employees, shall be paid in full without deduction by the employer.

(d) Each and every hospital maintained wholly or in part by payments from workmen, which furnishes treatment and services to employees for sickness and injury, as provided in this act, shall be under the supervision of the board as to the services and treatment rendered such employees, and shall from time to time make reports of such services, attendances, treatments, receipts, and disbursements as the board may require.

(e) Neither an employer, an insurer, nor the Board shall be liable in any way for an act in connection with the treatment or care, or malpractice in treatment or care, of any sicknes or injury sustained by an employee or the beneficiary of any hospital contract, where such act or treatment or malpractice in treatment is caused, or alleged to have been caused, by any physician, hospital, or attendant furnished by such employer, insurer, or the Board. In any action for malpractice arising out of the operations of this act the merits of such action shall be investigated by the Industrial Board, and the findings of the Board in relation thereto shall be filed with the clerk of the court in which the action is pending, and such findings shall be prima facie evidence of the truth thereof.

(f) In any action to recover damages for any act connected with the treatment or care or malpractice in treatment or care of any sickness of or injury sustained by an employee the question of whether or not due care was given by the defendants shall be a question of law for the court.

Sec. 27. After an injury and during the period resulting in disability, the employee, if so requested by his employer or ordered by the Industrial Board, shall submit himself to examination, at reasonable times and places, by a duly qualified physician or surgeon designated and paid by the employer or the Industrial Board. The employee shall have the right to have present at any such examination any duly qualified physician or surgeon provided and paid by him. No fact communicated to, or otherwise learned by any physician or surgeon who may have attended or examined the employee, or who may have been present at any examination, shall be privileged, either in the hearings provided for in this act, or in any action at law brought to recover damages against any employer who may have accepted the compensation provisions of this act. If the employee refuses to submit himself to or in any way obstructs such examination, his right to compensation and his right to take or prosecute any proceeding under this act shall be suspended until such refusal or obstruction ceases, and no compensation shall at any time be payable for the period of suspension unless in the opinion of the Industrial Board the circumstances justify the refusal or obstruction.

The employer, or the Industrial Board, shall have the right in any case of death to require an autopsy at the expense of the party requiring the same.

Sec. 28. No compensation shall be allowed for the first fourteen calendar days of disability resulting from an injury except the benefits provided for in Section 25; but if disability extends beyond that period compensation shall commence with the fifteenth day after the injury.

Sec. 29. Where the injury causes total disability for work, there shall be paid to the injured employee during such disability, but not including the first two weeks thereof, a weekly compensation equal to fifty per cent of his average weekly wages for a period of not to exceed three hundred thirty-three and one-third weeks. In case of the following injuries the disability shall be deemed total and permanent, to-wit:

(1) The total and permanent loss of sight in both eyes.

(2) The loss of both feet at or above the ankle.

(3) The loss of both hands at or above the wrist.

(4) A similar loss of one hand and one foot.

(5) An injury to the spine resulting in permanent and complete paralysis of both arms or both legs or of one arm and one leg.

(6) An injury to the skull resulting in incurable insanity or imbecility.

The above enumeration is not to be taken as exclusive, but in all other cases the burden of proof shall be on the claimant to prove that his injuries have resulted in permanent total disability.

Where there has been a previous disability, as the loss of one eye, one hand, one foot, or any other previous permanent disability, the percentage of disability for a subsequent injury shall be determined by computing the percentage of the entire disability and deducting therefrom the percentage of the previous disability as it existed at the time of the subsequent injury.

Sec. 30. Where the injury causes partial disability for work, there shall be paid to the injured employee during such disability but not including the first two weeks thereof, a weekly compensation equal to one-half of the difference between his "average weekly wages" and the weekly wages at which he is actually employed after the injury, for a period not to exceed two hundred and fifty weeks.

In case the partial disability begins after a period of total disability, the latter period shall be deducted from the maximum period allowed for partial disability.

Sec. 31. For injuries in the following schedule the employee shall receive in lieu of all other compensation a weekly compensation equal to fifty per cent of his average weekly wages for the periods stated against such injuries respectively, to-wit:

(a) For the loss by separation of not more than one phalange of a thumb or not more than two phalanges of a finger, 15 weeks;

(b) For the loss by separation of more than two phalanges of a finger or of a whole finger or a toe, 30 weeks;

(c) For the loss by separation of more than one phalange of a thumb or of a whole thumb, 60 weeks;

(d) For the permanent and irrecoverable loss of the sight of one eye or its reduction to one-tenth of normal vision with glasses, 100 weeks;

(e) For the loss by separation of one foot at or above the ankle joint, 125 weeks;

(f) For the loss by separation of one hand at or above the wrist joint, 150 weeks;

(g) For the loss by separation of one leg at or above the knee joint, 175 weeks.

(h) For the loss by separation of one arm at or above the elbow joint, 200 weeks;

(i) For the permanent and complete loss of hearing, 125 weeks.

(j) For hernia not to exceed 26 weeks, but a workman in order to be entitled to compensation for hernia must clearly prove: (1) That the hernia is of recent origin; (2) that its appearance was accompanied by pain, (3) that it was immediately preceded by some accidental strain suffered in the course of the employment, and (4) that it did not exist prior to the date of the alleged injury. If a workman, after establishing his right to compensation for hernia as above provided, elects to be operated upon, a special operating fee of not to exceed fifty dollars shall be paid by the employer or the insurer, as the case may be. In case such workman elects not to be operated upon, and the hernia becomes strangulated in the future, the results from such strangulation shall not be compensated.

The complete paralysis of an arm, hand, foot or leg shall be considered the loss of such member. The complete paralysis of both arms, both hands, both feet, or both legs, or any two of them, shall be considered the loss of such members.

Facial disfigurement: For permanent disfigurement about the head and face, the commission may allow such sum for compensation thereof as it may deem just, not exceeding fifty per cent of weekly wages, but not exceeding the sum of one thousand dollars ($1,000).

In all cases of permanent partial disability, not otherwise specified in the foregoing schedule, the disability shall be determined according to the percentage thereof, taking into account, among other things, any previous disability, the occupation of the injured employee, the nature of the physical injury or disfigurement, and the age of the employee at the time of the injury; and the compensation paid therefor shall be the percentage of the disability caused by the injury times fifty per cent of the average weekly wage (but not more than twelve dollars a week) for not exceeding two hundred weeks, during the life of the injured employee.

Sec. 32. If an injured employee refuses employment suitable to his capacity procured for him, he shall not be entitled to any compensation at any time during the continuance of such refusal unless in the opinion of the Industrial Board such refusal was justifiable.

Sec. 33. If an employee has sustained a permanent injury in another employment than that in which he received a subsequent per-

manent injury by accident, such as is specified in Section 31, he shall be entitled to compensation for the subsequent injury in the same amount as if the previous injury had not occurred, provided, however, that only the added injury resulting exclusively from the accident to be compensated for, shall be considered in measuring the amount of compensation.

Sec. 34. If an employee receives an injury for which compensation is payable while he is still receiving or entitled to compensation for a previous injury in the same employment, he shall not at the same time be entitled to compensation for both injuries unless it be for a permanent injury, such as is specified in Section 31; but he shall be entitled to compensation for that injury and from the time of that injury which will cover the longest period and the largest amount payable under this act.

Sec. 35. If an employee receives a permanent injury such as is specified in Section 31, after having sustained another permanent injury in the same employment, he shall be entitled to compensation for both injuries, but the total compensation shall be paid by extending the period and not by increasing the amount of weekly compensation.

When the previous and subsequent permanent injuries result in total permanent disability, compensation shall be payable for permanent total disability, but payments made for the previous injury shall be deducted from the total payment of compensation due.

Sec. 36. When an employee receives or is entitled to compensation under this act for an injury and dies from any other cause than the injury for which he was entitled to compensation, payment of the unpaid balance of compensation shall be made to his next of kin dependent upon him for support.

Sec. 37. Where death results from the injury within two hundred and fifty weeks, there shall be paid in addition to burial expenses not to exceed one hundred dollars, a weekly compensation equal to fifty per cent of the deceased's average weekly wages during such remaining part of two hundred and fifty weeks as compensation shall not have been paid to the deceased for total or partial disability, to all dependents of the employee wholly dependent upon his earnings for support at the time of the injury. If the employee leaves dependents only partially dependent upon his earnings for support at the time of the injury, the weekly compensation to those dependents shall, in addition to burial expenses, not to exceed one hundred dollars, be in the same proportion to the weekly compensation for persons wholly dependent as the amount contributed by the deceased employee to such partial dependents bears to his annual earnings at the time of the injury, provided that such dependents accepting payment under this act shall be deemed to have accepted, exclusively, the provisions and terms thereof.

Sec. 38. The following persons shall be conclusively presumed to be wholly dependent for support upon a deceased employee:

(a) A wife upon a husband with whom she lives at the time of his injury.

(b) A husband upon a wife with whom he lives at the time of her injury if he is then incapable of self-support and actually dependent upon her.

(c) A boy under the age of 17, or a girl under the age of 18 upon the parent with whom he or she is living at the time of the injury of such parent, there being no surviving dependent parent. If a child is over the ages specified above, but physically or mentally incapacitated from earning, he or she shall be presumed to be totally dependent if there is no surviving dependent parent.

As used in this section, the term "boy," "girl" or "child" shall include step-children, legally adopted children, posthumous children, acknowledged illegitimate children, but shall not include married children unless actually dependent; the term "parent" shall include step-parents and parents by adoption.

In all other cases, questions of dependency, in whole or in part, shall be determined in accordance with the fact, as the fact may be at the time of the injury; and in such other cases if there is more than one person wholly dependent, the death benefit shall be divided among them; and persons partly dependent, if any, shall receive no part thereof, unless otherwise ordered by the Board; if there is no one wholly dependent and more than one person partly dependent, the death benefit shall be divided among them according to the relative extent of their dependency.

The dependency shall not be construed to extend to others than the family of such deceased and who have a legal right under the laws of this State to support or financial aid from such deceased; nor shall such right to compensation be deemed a vested right.

For the purposes of this act, the dependence of a widow or widower of a deceased employee, and dependent children living with said widow or widower, shall terminate with remarriage, and the amount received by her shall be divided among other dependents in the proportion in which they are receiving compensation, and in the event of the separation of the wife from her second or subsequent husband and her obtaining a divorce upon her own application, then she shall receive the same compensation to which she would have been entitled had she not remarried, less any alimony she may be receiving, but the time from the date of the remarriage to the date of the divorce shall be deducted from the time compensation runs, and the dependence of a child, except a child physically or mentally incapacitated from earning, shall terminate with the attainment of 18 years of age for girls and 17 years of age for boys.

Sec. 39. If the deceased employee leaves no dependants the employer shall pay the burial expense of the deceased, not to exceed one hundred dollars, such burial to be subject to the supervision of the Industrial Board.

Sec. 40. In computing compensation under the foregoing sections, the average weekly wages of an employee shall be considered not to be more than twenty-four dollars, or less than ten dollars. And pro-

vided further, That the total compensation payable under this act shall in no case exceed four thousand dollars ($4,000).

Sec. 41. Any payments made by the employer to the injured employee during the period of his disability, or to his dependents, which by the terms of this act were not due and payable when made, may, subject to the approval of the Industrial Board, be deducted from the amount paid as compensation: Provided, That in case of disability such deduction shall be made by shortening the period during which compensation must be paid and not by reducing the amount of weekly payments unless otherwise hereinafter specified.

Sec. 42. The Industrial Board upon the application of either party, may, in its discretion, having regard to the welfare of the employee and the convenience of the employer, authorize compensation to be paid monthly or quarterly instead of weekly.

Sec. 43. Whenever any weekly payment has been continued for not less than thirteen weeks, the liability therefor may, in unusual cases, where the parties agree and the Industrial Board deems it to be for their best interests, be redeemed by the payment, in whole or in part, by the employer, of a lump or gross sum, which shall be fixed by the Board, but in no case to exceed the commutable value of the future installments which may be due under this Act, considering interest at the rate of 6 per cent per annum.

The Board may, however, in its discretion, at any time, in the case of a minor who has received permanently disabling injuries, either partial or total, provide that he be compensated in whole or in part by the payment of a lump or gross sum, the amount of which shall be fixed by the Board, but in no case to exceed the commutable value of the future installments which may be due under this Act, considering interest at the rate of 6 per cent per annum.

Sec. 44. Whenever the Industrial Board deems it expedient, any lump sum under the foregoing section shall be paid by the employer to some suitable person or corporation appointed by the Industrial Board, as trustee, to administer the same for the benefit of the person entitled thereto, in the manner provided by the Board. The receipt of such trustee for the amount as paid shall discharge the employer or anyone else who is liable therefor.

Sec. 45. Upon its own motion or upon the application of any party in interest on the ground of a change in condition, the Industrial Board may at any time review any award and on such review may make an award ending, diminishing or increasing the compensation previously awarded, subject to the maximum or minimum provided in this act, and shall immediately send to the parties a copy of the award. No such review shall affect such award as regards any moneys paid.

Sec. 46. Whenever payment of compensation is made to a widow or widower for her or his use, and the use of a child or children, the written receipt thereof by such widow or widower shall acquit the employer.

Whenever payment is made to any person 17 years of age or

over, the written receipt of such person shall acquit the employer.

Whenever payment is made to a minor under the age of 17 years, or to a dependent child over the age of 17, the same shall be made to some suitable person or corporation appointed by the Industrial Board as trustee or guardian, and the receipt of such trustee or guardian shall acquit the employer; provided, however, that the Industrial Board may review the facts and circumstances surrounding the payment of any money and the taking of any receipt as provided in this section, and may set the same aside either for fraud or undue influence.

Sec. 47. If an injured employee is mentally incompetent or is under 17 years of age at the time when any right or privilege accrues to him under this act, his guardian or trustee may in his behalf claim and exercise such right or privilege.

Sec. 48. No limitation of time provided in this act shall run as against any person who is mentally incompetent or a minor dependent, so long as he has no guardian or trustee.

Sec. 49. Whenever any employee for whose injury or death compensation is payable under this act shall at the time of the injury be in the joint service of two or more employers subject to this act, such employers shall contribute to the payment of such compensation in proportion to their wage liability to such employees; Provided, however, That nothing in this section shall prevent any reasonable arrangement between such employers for a different distribution as between themselves of the ultimate burden of compensation.

PART III.

ADMINISTRATION.

Sec. 50. There is hereby created a Board which shall be known as the Industrial Board of Utah, whose term of office shall be four years, except as otherwise provided in this section, which shall consist of three members appointed by the Governor. Of the Board as first constituted, one member shall be appointed for two years, who shall be Chairman during his term; one member shall be appointed for three years, who shall be Chairman during the third year; and one member shall be appointed for four years, who shall be Chairman during the fourth year. Thereafter, the senior member in length of service on the Board in his current term in any given year shall be Chairman during that year.

Vacancies on the board shall be filled by appointment by the Governor for the remainder of the unexpired term, but no vacancy shall impair the rights of the remaining members to exercise all the powers of the Board, nor shall relieve such members from discharging all the duties of the Board during such vacancy. In the event of a vacancy, the appointee for the unexpired term shall not succeed his predecessor in the chairmanship of the Board; such other member as would, but for

the vacancy, have been chairman shall at once succeed to the unexpired chairmanship, when a vacancy occurs therein, in addition to the year's chairmanship to which he would otherwise have been entitled.

No person shall be eligible to appointment as a member of the Board unless he shall be at least 30 years of age, a resident of Utah not less than three years consecutively next preceding his appointment, unbiased, of good moral character, and of a previous experience and training to qualify him to efficiently and justly discharge the duties of his office. One member, at least, shall be well versed in the practice and procedure of the law. No more than two of its members shall belong to the same political party.

The majority of the Board shall constitute a quorum.

Sec. 51. The salary of each member of the Board shall be four thousand dollars per year.

The Board may appoint a secretary and may also employ such clerical and other assistants as it may deem necessary and fix the compensation of all persons so employed, and may remove them.

The members of the Board and its assistants shall be entitled to receive from the State their actual and necessary expenses while traveling on the business of the Board, but such expenses shall be sworn to by the person who incurred the same and shall be approved by a majority of the Board before payment is made.

All salaries and expenses of the Board shall be audited and paid out of the State Treasury in the manner prescribed for similar expenses in other departments or branches of the State service.

Sec. 52. The Board, and each Commissioner thereof, shall, for the purpose of this act, have power to summon and examine under oath, witnesses, and may direct the production of and examination of or cause to be produced and examined such books, records, vouchers, memoranda, documents, letters, contracts or other papers in relation to any matter at issue as may be found proper, and shall have the same powers in reference thereto as Judges of the District Court. They shall have power to certify to all official acts and all powers necessary to enable them to perform the duties imposed upon them by the provisions of this Act.

They shall have power to take depositions or authorize them to be taken when necessary, in the same manner as the District Court.

Sec. 53. The District or Supreme Court, on application of the Board, through the Attorney General or otherwise, may enforce by appropriate decree or process, any provision of this Act or any order of the Board.

The Attorney General or any District Attorney of the State shall render such assistance to the Board as it may request.

Sec. 54. The Board shall be provided with adequate offices in the Capitol or some other suitable building in the city of Salt Lake, in which the records shall be kept and its official business be transacted during regular business hours; it shall also be provided with necessary

office furniture, stationery and other supplies.

The Board or any member thereof may hold sessions at any place within the State as may be deemed necessary.

Sec. 55. The Board may make rules not inconsistent with this act for carrying out the provisions of this act. Processes and procedure under this act shall be as summary and simple as reasonably may be.

The County Sheriff shall serve all subpoenas of the Board or any member thereof, and shall receive the same fees as provided by law for like service in civil actions; each witness who appears in obedience to such subpoena shall receive for attendance the fees and mileage for witnesses in civil cases in the courts. In addition thereto the District or Supreme Court shall, on application of the Board or any member thereof, enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and records and shall, if so requested, enforce its orders and decrees.

Sec. 56. The Board shall prepare and cause to be printed, and upon request furnish free of charge to any employer or employee, such blank forms and literature as it shall deem requisite to facilitate or promote the efficient administration of this act.

The Board shall tabulate the accident reports received from employers in accordance with Section 67, and shall publish the same in the annual report of the Board and as often as it may deem advisable, in such detailed or aggregate form as it may deem best. The name of the employer or employee shall not appear in such publications and the employers' reports themselves shall be private records of the Board and shall not be open for public inspection except for the inspection of the parties directly involved. These reports shall not be used as evidence against any employer in any suit at law brought by any employee for the recovery of damages.

Sec. 57. If after fourteen days from the date of the injury, or at any time in case of death, the employer and the injured employee or his dependents reach an agreement in regard to compensation under this act, a memorandum of the agreement in the form prescribed by the Industrial Board shall be filed with the Board; otherwise such agreement shall be voidable by the employee or his dependents.

If approved by the Board, thereupon the memorandum shall for all purposes be enforceable by the court decree as hereinafter specified. Such agreement shall be approved by said Board only when the terms conform to the provisions of this act.

Sec. 58. If the employer and the injured employee or his dependents fail to reach an agreement in regard to compensation under this act, or if they have reached such an agreement which has been signed and filed with the Board and compensation has been paid or is due in accordance therewith, and the parties thereto then disagree as to the continuance of any weekly payment under such agreement, either party may make an application to the Industrial Board for a hearing in regard to the matters at issue and for a ruling thereon,

Immediately after such application has been received the Board shall set the date for a hearing, which shall be held as soon as practicable, and shall notify the parties at issue of the time and place of such hearing. The hearing shall be held at such place as the Board shall designate.

Sec. 59. The Board or any of its members shall hear the parties at issue and their representatives and witnesses and shall determine the dispute in a summary manner. The award, together with a statement of the findings of fact, rulings of law and any other matters pertinent to the question at issue shall be filed with the record of proceedings, and a copy of the award shall immediately be sent to the parties in dispute.

Sec. 60. If an application for review is made to the Board within seven days from the date of the award, the full Board, if the first hearing was not held before the full Board, shall review the evidence, or, if deemed advisable, as soon as practicable hear the parties at issue, their representatives and witnesses, and shall make an award and file same in like manner as specified in the foregoing section.

Sec. 61. An award of the Board, as provided in Section 59, if not reviewed in due time, or an award of the Board upon such review as provided in Section 60, shall be conclusive and binding as to all questions of fact, but either party to the dispute may within thirty days from the date of the award appeal to the Supreme court for errors of law under the same terms and conditions as govern appeals in ordinary civil actions. The Board, of its own motion, may certify questions of law to said Supreme court for its decision and determination.

Sec. 62. Any party in interest may file in the District court in the county in which the injury occurred, or in the Supreme Court of the state a certified copy of a memorandum of agreement approved by the Board or of an order or decision of the Board, or of an award of the Board unappealed from, or of an award of the Board rendered upon an appeal, whereupon said court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect and all proceedings in relation thereto shall thereafter be the same as though said judgment had been rendered in a suit duly heard and determined by said court.

Any such judgment of said District Court unappealed from or affirmed on appeal by the Supreme Court or modified in obedience to the mandate of the Supreme Court, shall be modified to conform to any decision of the Industrial Board, ending, diminishing or increasing any weekly payment under the provisions of Section 45 of this Act upon the presentation to it of a certified copy of such decision.

Sec. 63. If the Industrial Board or any court before whom any proceedings are brought under this act shall determine that such proceedings have been brought, prosecuted or defended without reasonable ground, it may assess the whole cost of the proceedings upon the party who has so brought, prosecuted or defended them.

Sec. 64. The Board or any member thereof may, upon the application of either party or upon its own motion, appoint a disinterested and duly qualified physician or surgeon to make any necessary medical examination of the employee and to testify in respect thereto. Said physician or surgeon shall be allowed traveling expenses and a reasonable fee, to be fixed by the Board, not exceeding ten dollars for each examination and report, but the Board may allow additional reasonable amounts in extraordinary cases.

The fees and expenses of such physician or surgeon shall be paid by the State.

Sec. 65. Fees of attorneys and physicians and charges of hospitals for services under this act shall be subject to the approval of the Board.

Sec. 66. All questions arising under this act, if not settled by agreement of the parties interested therein with the approval of the Board, shall be determined by the Board except as otherwise herein provided for.

Sec. 67. Every employer shall hereafter keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment. Within one week after the occurrence and knowledge thereof, as provided in Section 2, of an injury to an employee causing his absence from work for more than two days, a report thereof shall be made in writing and mailed to the Board on blanks to be procured from the Board for the purpose.

Upon the termination of the disability of the injured employee, or if the disability extends beyond a period of 60 days, then also at the expiration of such period the employer shall make a supplementary report to the Board on blanks to be procured from the Board for the purpose.

The said reports shall contain the name, nature and location of the business of the employer, and name, age, sex, wages and occupation of the injured employee, and shall state the date and hour of the accident causing the injury, the nature and cause of the injury and such other information as may be required by the Board.

Any employer who refuses or wilfully neglects to make the report required by this section shall be liable for a penalty of not more than twenty-five dollars for each refusal or neglect, to be recoverable in any court of competent jurisdiction in a suit by the Board.

Members of the "Industrial Board" shall be considered as officers, and shall take the oath prescribed by the Constitution and laws of Utah, and shall each give bond in the sum of $10,000 of a surety company authorized to do business in the State, for the faithful performance of their duties, which bonds shall be approved by the Governor and kept on file in the office of the Secretary of State. The premium upon said bonds shall be paid by the State.

The Industrial Board shall be provided with an appropriate seal.

PART IV.

INSURANCE.

Sec. 68. Every employer under this Act shall either insure and keep insured his liability hereunder in some corporation, association or organization authorized to transact the business of workmen's compensation insurance in this State, or shall furnish to the Industrial Board satisfactory proof of his financial ability to pay direct the compensation in the amount and manner and when due as provided for in this act. In the latter case the Board may in its discretion require the deposit of an acceptable security, indemnity or bond to secure the payment of compensation liabilities as they are incurred.

Sec. 69. Every employer accepting the compensation provisions of this act shall within thirty days after this act takes effect file with the Board in form prescribed by it, and thereafter annually or as often as may be necessary, evidence of his compliance with the provisions of Section 68 and all others relating thereto.

If such employer refuses or neglects to comply with these provisions he shall be punished by a fine of ten cents for each employee at the time of the insurance becoming due, but not less than one dollar nor more than fifty dollars for each day of such refusal or neglect and until the same ceases, and he shall be liable during continuance of such refusal or neglect to an employee either for compensation under this act or at law in the same manner as provided for in Section 10.

Sec. 70. Whenever an employer has complied with the provisions of Section 68, relating to self insurance, the Industrial Board shall issue to such employer a certificate which shall remain in force for a period fixed by the Board, but the Board may upon at least sixty days' notice and a hearing to the employer revoke the certificate upon satisfactory evidence for such revocation having been presented. After a reasonable time from such revocation the Board may grant a new certificate to the employer upon his petition.

Sec. 71. For the purpose of complying with the provisions of Section 68, groups of employers operating in the State of Utah, to form Mutual Insurance Associations, subject to such reasonable conditions and restrictions as may be fixed by the Industrial Board, are hereby authorized; provided, however, that such insurance carriers shall have a financial responsibility at least equal to that required by the present insurance laws with regard to Mutual Insurance Associations or Companies and until otherwise provided the requirements of the present insurance code of this State shall apply to all such Mutual Insurance carriers, operating under this law and membership in such mutual insurance associations, so approved, together with evidence of payment of the premiums due, shall be evidence of compliance with Section 68.

Sec. 72. Subject to the approval of the Industrial Board, any employer may enter into or continue any agreement with his employees to provide a system of compensation, benefit or insurance in lieu of the compensation and insurance provided by this act. No such

substitute system shall be approved unless it confers benefits upon injured employees at least equivalent to the benefits provided by this Act, or if it requires contributions from the employees unless it confers benefits in addition to those provided under this act at least commensurate with such contributions, except as provided in Sections 25 and 26.

Such substitute system may be terminated by the Industrial Board on reasonable notice and hearing to the interested parties if it shall appear that the same is not fairly administered or if its operation shall disclose latent defects threatening its solvency, or if for any substantial reason it fails to accomplish the purposes of this act; and in this case the Board shall determine upon the proper distribution of all remaining assets, if any, subject to the right of any party in interest to take an appeal to the Supreme Court, under the same rules governing appeals from the District Court, until otherwise provided by the Board.

Sec. 73. All policies insuring the payment of compensation under this act must contain a clause to the effect that as between the employer and the insurer the notice to or knowledge of the occurrence of the injury on the part of the insured shall be deemed notice or knowledge, as the case may be, on the part of the insurer; that jurisdiction of the insured for the purposes of this act shall be jurisdiction of the insurer; and that the insurer shall in all things be bound by and subject to the awards, judgments or decrees rendered against such insured, whether under this Act or at common law; provided, however, that in case action at common law is instituted, that while it shall be the duty of the insurer to investigate and defend such claims and suits, it shall not be liable to pay any judgments resulting therefrom beyond the limits herein provided.

Sec. 74. No policy of insurance against liability arising under this act shall be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled to same all benefits conferred by this act, and all installments of the compensation that may be awarded or agreed upon, and that the obligation shall not be affected by any default of the insured after the injury, or by any default in the giving of any notice required by such policy, or otherwise. Such agreement shall be construed to be a direct promise by the insurer to the person entitled to compensation enforceable in his name.

Sec. 75. Every policy for the insurance of the compensation herein provided, or against liability thereof, shall be deemed to be made subject to the provisions of this act. No corporation, association or organization shall enter into any such policy of insurance unless its form shall have been approved by the Industrial Board.

PART V.

DEFINITIONS AND MISCELLANEOUS PROVISIONS.

Sec. 76. In this Act, unless the context otherwise requires:

(a) "Employer" shall include the State and any municipal corporation within the State or any political division thereof, and any

individual, firm, association or corporation or the receiver or trustee of the same or the legal representatives of a deceased employer, using the services of another for pay, subject to the provisions of Section 9 hereof. If the employer is insured it shall include his insurer so far as applicable.

(b) "Employee" shall include every person, including a minor in the service of another under any contract of hire or apprenticeship, written or implied, but not including any person who is expressly excluded by the provisions of this Act. Any reference to an employee who has been injured shall, when the employee is dead, also include his legal representatives, dependents and other persons to whom compensation may be payable.

(c) "Average weekly wages" shall mean the earnings of the injured employee in the employment in which he was working at the time of the injury during the period of fifty-two weeks immediately preceding the date of injury, divided by fifty-two; but if the injured employee lost more than seven consecutive calendar days during such period, although not in the same week, then the earnings for the remainder of such fifty-two weeks shall be divided by the number of weeks remaining after the time so lost has been deducted. Where the employment prior to the injury extended over a period of less than fifty-two weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed provided results just and fair to both parties will thereby be obtained. Where by reason of the shortness of the time during which the employee has been in the employment of his employer or the casual nature or terms of the employment, it is impracticable to compute the average weekly wages as above defined, regard shall be had to the average weekly amount which during the fifty-two weeks previous to the injury was being earned by a person in the same grade, employed at the same work by the same employer, or if there is no person so employed, by a person in the same grade employed in the same class of employment in the same district.

Where for exceptional reasons the foregoing rule will be unfair such other method of computing average weekly wages may be resorted to as will most nearly approximate the amount which the injured workmen would be earning were it not for the injury.

Wherever allowances of any character made to an employee in lieu of wages are a specified part of the wage contract, they shall be deemed a part of his earnings.

(d) "Injury" and "Personal Injury" shall mean only injury by accident arising out of and in the course of the employment and due to a condition or conditions thereof, and shall not include a disease in any form except as it shall result proximately from the injury.

Sec. 77. Compensation under this Act to alien dependent widows, parents and children under the age of 17 years, not residents of the United States, shall be one-half of the amount provided in each case for residents, in no case to exceed the sum of One Thousand Dollars

($1,000), and the employer may at any time commute all future installments of compensation to alien dependents to the then value thereof, considering interest at the rate of six per cent per annum, subject to the approval of the Board. Alien widowers, brothers and sisters and children over the age of 17 years, not residents of the United States, shall not be entitled to any compensation.

Sec. 78. Any notice required to be given under this Act shall be deemed to have been properly given and served when deposited in the mail in a rgistered letter or package properly stamped and addressed to the person to whom notice is to be given at his last known address and in time to reach him in due time to act thereon. Notice may also be given and served in like manner as are notices in civil actions. Any notice, given and served as provided in this section to the consular representative of the nation of which any non-resident dependent of a deceased employee is a citizen or subject or to the authorized agent or representative of any such official residing in this State, shall be deemed to have been properly given and served upon such dependent.

Sec. 79. If any section or provision of this Act be decided by the courts to be unconstitutional or invalid, the same shall not affect the validity of this act as a whole or any part thereof, other than the part so decided to be unconstitutional or invalid.

Sec. 80. All acts and parts of acts in conflict with any provisions of this Act are hereby repealed to the extent of such conflicts.

Sec. 81. Appropriation: For the purpose of paying the salaries and expenses of the members of the Industrial Board and its employees, the sum of $25,000 per year, or so much thereof as may be necessary, is hereby appropriated out of any moneys in the State Treasury not otherwise appropriated.

Sec. 82. The provisions of this Act shall not affect pending litigation.

Sec. 83. This Act shall take effect on July 1, 1917, except that Part III, with the exception of Sec. 67, shall take effect upon approval.

DIGEST OF THE TENTATIVE UTAH WORKMEN'S COMPENSATION LAW.

TITLE, ETC.

Liability provisions effective July 1, 1917; administrative provisions (except requirement of accident reports, etc., by employer), effective from date of approval (§83.)

SYSTEM PROVIDED FOR.

Compensation, with insurance, elective, but compulsory as to State, counties, etc. (§§2-5, 18). Supervised by Industrial Board of Utah (Part III).

HOW ELECTED.

Employer's acceptance is presumed in absence of notice to contrary at time of hiring or 30 days prior to accident, conspicuously posted at place of business or served upon employee personally, with copy to Board. (§§2-4).

Employee's acceptance is presumed in absence of written notice to employer at time of hiring or 30 days prior to accident, with copy to Board (§§ 2-4).

HOW ELECTION CHANGED.

Election to reject may be changed by employer or employee at any time by notice as in original election (§ 3).

ALTERNATIVE LIABILITY.

If employer gives notice of rejection, defenses of contributory negligence, fellow servant's fault and assumption of risks are abrograted. If employer accepts Act, and employee does not, defenses remain (§§ 10-12).

EMPLOYMENTS COVERED.

All, public and private, except casual and not in usual course of trade, business, etc., of employer, where less than four employed, private household or domestic servants, unless they voluntarily elect to come under Act. But excepted employments are subject to requirement of reporting accidents, etc. (§§ 9, 18, 76a, b).

EMPLOYMENT IN INTERSTATE COMMERCE.

Except as to requirement of reporting accidents, etc., Act does not apply to employers engaged in interstate or foreign commerce if injuries to their employees are provided for by Federal enactment (§ 19).

INJURIES COVERED.

Personal injuries by accident arising out of and in course of employment, whether within the State or outside, or in a foreign country, unless due to wilful misconduct (§§ 2, 8, 20, 76d).

NOTICE OF INJURY AND CLAIM FOR COMPENSATION.

Notice of injury must be given to employer immediately or as soon as practicable thereafter, unless employer has knowledge thereof or other excusable grounds exist. Compensation barred if notice not given within 30 days after injury or death. Defect in notice no bar unless employer is prejudiced thereby. Claim must be filed within 1 year after injury or death (§§ 22-24).

WAITING PERIOD.

First two weeks of disability. Compensation begins on 15th day after injury (§28).

MEDICAL AND SURGICAL AID.

Employer must furnish medical aid, etc., during 30 days after injury, in absence of regular "hospital" arrangement, with maximum liability therefor of $100, and, at his option, may continue same during entire period of disability or any remaining part thereof. Employee's refusal to accept treatment suspends, and may forfeit, compensation for period of continuance. If employer fails to provide such attendance for 30 days, he is liable for reasonable cost thereof, subject to approval of Board (§§25-26).

COMPENSATION FOR TOTAL DISABILITY.

Fifty per cent of average weekly wages, maximum $12, minimum $5, weekly; maximum period 333 1-3 weeks, maximum amount $4,000 (§§29, 40).

COMPENSATION FOR PARTIAL DISABILITY.

One-half of average loss of earning power, maximum $12.00 weekly, maximum period 250 weeks, including period of total disability, if any; maximum amount $3,000. Special schedule for loss of certain members, etc., in lieu of other compensation (§§ 30, 31, 40). Special provisions in case of successive injuries (§§ 33-35).

COMPENSATION FOR DEATH.

If death results from injury within 250 weeks, burial expenses, maximum $100, and in addition, to total dependents, fifty per cent. of average weekly wages, maximum $12.00 weekly, for remainder of period between death and 250 weeks after injury; to partial dependents, such proportion of foregoing as amount contributed by deceased to their support bore to his annual earnings. If death was not due to injury, balance of disability award to be paid to dependents (§§ 36, 37, 40).

AVERAGE WAGES—HOW COMPUTED.

Average weekly wages to mean earnings for preceding year divided by 52; but if employee lost more than seven consecutive days' time, such loss to be deducted from divisor. Where this method is not practicable, regard may be had to average wages of another person in the same locality and class of employment, or probable amount of earnings of employee if injury had not occurred (§ 76c).

WHO ARE DEPENDENTS.

Certain persons conclusively presumed totally dependent. In other cases dependency is determinable according to facts at the time of injury (§ 38).

NON-RESIDENT ALIEN BENEFICIARIES.

Half benefits, manimum $1,000. Dependents restricted to widows, parents and children under 17. (§ 77.)

MEDICAL EXAMINATION.

Injured employee, if requested by employer or ordered by Board, must submit to medical examination at reasonable times and places. Employee may have own physician present. Refusal to submit suspends, and unless justifiable, forfeits, right to compensation during continuance. In case of death, employer or Board may require an autopsy at own expense (§ 27).

SETTLEMENT OF CLAIMS AND DISPUTES.

Terms of compensation may be fixed by agreement, after 14 days from date of injury, subject to approval of Board; or by Board, or a member thereof, after a hearing, upon application of either party. Award made by member of Board is subject to review by full Board upon application made within seven days from date thereof (§§ 57-60).

RIGHT OF APPEAL.

An award of the Board is conclusive as to questions of fact; but within 30 days either party may appeal to Supreme Court on errors of law; or Board may of its own motion certify questions of law to the Supreme Court for determination (§ 61).

MODIFICATIONS OF AGREEMENTS AND AWARDS.

The Board may at any time, on its own motion, or upon application of any party in interest, on the ground of a change in conditions, review an award and increase, diminish or terminate payments (§ 45).

COMMUTATIONS.

Upon application of either party, the Board may authorize monthly or quarterly, instead of weekly, payments. After 13 weeks, a weekly payment, in unusual cases, may be redeemed by a lump sum payment, by agreement, subject to approval of Board. In case of a minor permanently disabled, Board may in its discretion award a lump sum at any time. Or Board may order employer to pay lump sum to trustee and be discharged (§§ 42-44).

PREFERENCE.

The right to compensation has the same preference against employer's assets as is allowed for unpaid wages for labor (§ 16).

ASSIGNMENTS AND EXEMPTIONS.

A claim for compensation is not assignable and is exempt from all claims of creditors (§ 17).

PROCEEDINGS TO COLLECT COMPENSATION.

Upon presentation of a certified copy of approved memorandum of agreement or decision of Board, Supreme Court must render judgment in accordance therewith, which has same effect as though rendered in action (§ 62).

ATTORNEYS' LIENS AND FEES, ETC.

Attorneys' and physicians' fees and hospital charges are subject to approval by the Board (§ 65).

MINORS AND INCOMPETENT PERSONS.

Election to reject provisions of Act on behalf of a minor employee may be made only by parent or guardian (§ 4). Payments to minors under 18 or dependent children over 18 must be made through trustee appointed by Supreme Court. Rights accruing to minor under 18 or incompetent person may be enforced in his behalf by guardian or trustee. No time limitation is to run against minor dependent or incompetent person pending appointment of guardian or trustee (§§ 46-48).

SUBROGATION.

Where right of action exists against third party, employee has option either to claim compensation or sue third party for damages. If employer or insurer pays compensation, he is subrogated to employee's rights against third party to the extent of compensation paid or payable (§§ 13, 76a).

SUB-CONTRACTORS.

If injury occurs on premises under control of principal, he is liable for compensation to employees of contractor or sub-contractor, but is entitled to indemnity from the latter. Claim must be made in the first place against immediate employer (§ 14).

SUITS FOR DAMAGES.

If elected, compensation is the exclusive remedy for injuries covered (§ 6), but not so as to relieve employer from penalty for neglect of statutory duty (§ 7).

ACCIDENT PREVENTION.

No provision.

REPORTS REQUIRED OF EMPLOYER.

Employer must report to the Board all injuries causing absence from work for more than two days, within a week after occurrence; and must make supplementary report after 60 days or upon termination of disability; $25 fine for failure to comply (§ 67). Evidence of insurance or financial responsibility must be filed by assenting employer with Board within 30 days after Act takes effect and annually thereafter (§ 69).

"CONTRACTING OUT."

Alternative compensation or insurance schemes are authorized, subject to approval of Board, provided benefits are not less than those under the Act. If such arrangement involves contributions by employees, additional benefits must be commensurate therewith (§ 72). Other contracting out forbidden (§ 15).

INSURANCE.

Assenting employer may insure himself, upon furnishing Board with proof of financial responsibility, with deposit of bond or other security, if required by Board, or he may insure in some regularly authorized stock casualty insurance company or join with others in forming regularly authorized mutual insurance companies. Penalty for non-compliance, from $1 to $50 (according to number of employees) for each day's neglect (§§68-70). Insurance policies must stipulate that notice to insured is notice to insurer; that insurer is directly liable to employee, and that employer's default does not discharge insurer; and are otherwise deemed subject to provisions of Act (§§73-75).

MISCELLANEOUS PROVISIONS.

If injured employee refuses suitable employment procured by employer, he is not entitled to compensation for period of refusal, unless justifiable (§ 32).

Joint employers of same employee may agree upon apportionment of liability (§ 49).

If proceedings brought before Board or Court are not based on reasonable grounds, entire cost thereof may be assessed against party bringing them (§ 63).

CONSTITUTIONALITY.

If any part of Act is held unconstitutional, it shall not affect the validity of the Act as a whole or of any other part thereof. (§ 79.)

On account of Article 16, Section 5 of the Utah Constitution, "The right of action to recover damages for injuries resulting in death, shall never be abrogated, and the amount recoverable shall not be subject to statutory limitation," where injuries result in death, heirs may sue under common law, but employer shall have all common law defenses restored (§§6, 11).

Extracts from letters received by the Employer's Liability and Workmen's Compensation Commission.

UTAH FUEL CO.
Judge Building
Salt Lake City

Employers' Liability and Workmen's Compensation Commission,
Salt Lake City, Utah.

Dear Sirs:

In compliance with our verbal understanding, and based on the second proof sheets printed early in September last of the tentative draft for "The Utah Workmen's Compensation Act" prepared by your honorable committee, I wish to submit a few suggestions in relation thereto.

The bill as proposed seems to me to be, in general, an excellent one, containing the best provisions of previous legislation on the subject and leaving out undesirable features in the laws of many of the states.

While not true in all cases in general, the compensation in the proposed law seems to be in excess of that established in surrounding states, whose industries are most strongly in competition with those of Utah. Utah industries affected would undoubtedly be adversely influenced to a certain extent by this situation, as it would either result in a reduction in earning power or a reduced ability to meet the competition from these states if the increased cost of compensation is added to the cost of the product. It would not seem unreaonsable that the compensation in Utah, as far as it depends upon this feature of the case, should certainly not be in excess of the others.

I trust that the suggestions made herein will be considered as being made in friendly spirit, and from a source that is favorable to a good and equitable Compensation Law, which I believe the Commission will undoubtedly present to the Legislature.

Thanking you for your consideration, I am

Yours very truly,

H. G. WILLIAMS,
Consulting Manager, Utah Fuel Co.

MANUFACTURERS ASSOCIATION OF UTAH

Salt Lake City

October 12, 1916.

Employer's Liability and Workmen's Compensation Commission,
Salt Lake City, Utah.

Gentlemen:

In accordance with your request we take much pleasure in stating our views upon the tentative bill prepared by your honorable commission covering the subject of Employer's Liability and Workmen's Compensation.

The copy of the bill now in our hands, considered as a whole, has our hearty endorsement. We commend the commission upon the earnestness with which the subject has been studied and the manner in which the different sections have been worded.

One of the vital parts of the bill, of course, is the compensation schedule. By comparing this schedule with that of other states we observe tsat it is higher than many states and lower than others. We understand, however, that the commission has endeavored to strike a happy middle ground upon which all interested may stand. The schedule is in a sense a compromise, and in consideration of this fact our Association will offer no objection to it, providing it is adopted as now printed. However, if any effort is made to raise the schedule, in our judgment, it will seriously effect the bill, because it will place a handicap upon manufacturing in this state which the industries cannot stand.

One of our keenest competitors in manufacturing lines is Colorado, and in comparison with the Colorado law the schedule of compensation, in many instances, shows a decided increase over theirs.

An example: Take the subjects of total disability. Under our proposed law the amount which may be paid is $4,000, while in Colorado the amount is but $2,080. The proposed maximum wage recovery is $12, as compared with $8.00 in Colorado.

If the schedule should be further increased the rate of insurance will be so high, it is evident that a most serious handicap will be placed upon our industries.

We think that in some instances the schedule should be made lower, but on the whole it will probably work out all right.

The matter of having the law apply strictly to injuries rising out of and in the course of employment is very important. We believe that you will agree with us that we are not prepared at the present time to include, even by inference, the question of occupational diseases. This question opens up a new and broad field, which must be handled separately.

It seems to us that the definition of an injury, in Section 78d, should remain as it now is, with the possible exception of the addition of the word proximate before the word injury, on the last line.

We also commend your commission upon the time designated as the waiting period. It may be of interest, however, to note that in Colorado this time is increased to three weeks. We presume, however, that here again a compromise has been struck and the time placed at fourteen calendar days. In our opinion it is important that this waiting period shall not be made any lower.

By comparison with other features the question of an industrial board to administer the law is not of great importance; however, we believe that economy should be a watchword in framing this law, and it has occurred to us that, perhaps, there can be a saving in administra-

tion costs if but one commissioner is provided for and a part of the work of administration given to the district judges.

When this law becomes operative the work of the district judges should be decreased. A considerable number of cases arising out of personal injuries, which are now handled by the courts, will be cared for under the law without suit, and when disputes arise they will ordinarily be arbitrated by those selected to administer the law and will not demand the time of the courts.

Indiana, with a population seven times as large as ours, is able to administer its law satisfactorily with but three commissioners, and in this state, with its small population, it seems to us one commissioner will be sufficient. We commend this matter to your earnest attention.

Assuring you of our best wishes, and of our earnest desire to cooperate with you in every way possible to secure a bill which will meet with the approval of all parties concerned, we remain

Sincerely yours,

MANUFACTURERS ASSOCIATION OF UTAH,
By. Geo. S. McAllister, Pres.

UNITED STATES SENATE

September 10th, 1916.

H. B. Windsor, Secy.,
Salt Lake City, Utah.

My dear Mr. Windsor:

I have your letter of the 8th inst. and also the last print of your proposed Workmen's Compensation law.

I regret very much that my time has been so occupied that I have not been able to go over the proposed bill with care. I have, however, read it over. I think in the main it is an excellent law. The only general criticisms which I have are:

First, I think the schedule of compensation is rather low. My own judgment is that payment to the widow for death claims ought to run for at least eight years, and for minor children until they become sixteen. In this connection I invite your attention to the last draft of the bill which I introduced in Congress, page 30, section 21. In the case of permanent total disability I think the payment should continue for life. (See page 35.)

Second, I believe it to be unwise to deny compensation in any case except where the accident was due to the intoxication of the employe or resulted from an attempt to injure or destroy himself or another. (See page 71, paragraph "J" of the enclosed Report on my bill.)

I also make the following suggestions as to the phraseology of the bill:

1. Section 2, line 2, should you not insert the word "conclusively" before the word "presume?" Otherwise there is danger of your provision being construed so as to allow the presumption to be rebutted.

2. Page 4, section 17: should you not also provide that the claim for compensation shall be exempt from execution? This may be included under the phrase "Claims of Creditors," but I am not sure.

3. Section 18 provides broadly that the provisions of the act shall apply to the employes of the state, counties, etc. Are there not some

provisions that from their very nature will not apply to the government; such as for example, provisions with reference to insurance?

4. Page 6, section 25, first line: should you not insert the word "first" before the word "thirty", so as to read "during the first thirty days"?

Sections 6 and 11 I think are substantially like the provisions of the New Jersey law and other elective laws, and are sufficient to coerce acceptance, which, of course, is their purpose.

Before expressing myself with reference to other matters in the bill I should like to go over it with a great deal more care than I have had time to do. If you have not finished the work by that time, I would be glad to talk with you during the first week of October, when I shall probably be in Salt Lake.

Very sincerely,

GEORGE SUTHERLAND.

Also from letter of December 7th, 1916, written from Washington, D. C.:

I have again gone over the draft of your tentative workmen's compensation bill, but find nothing to suggest beyond what I have already said.

I still think the compensation provided is somewhat low, but it may be that it will be necessary to leave the schedule as it is in order to get the bill through and establish the principle.

I think the experience of most of the states has been that in actual operation these compensation laws have not been as expensive as it was anticipated.

I sincerely hope you will succeed in getting the bill through at the present session of the legislature.

Very sincerely yours,

GEO. SUTHERLAND.

From the Labor World of Pittsburg, Pa., with relation to State Insurance:

I do believe that private enterprise is the better agency for the accomplishment of general betterment and welfare than the state, in maters that can be better attended to by individual effort. * * * Your law is a comprehensive one. * * * On the surface of it I do not see that labor can reasonably complain about it, and I am sure that the employers will not. One thing I wish to state most emphatically is that Workmen's Compensation is now in this country to stay and will spread and become established in every state in the Union. Our aim ought to be to secure the best and we will never attain that without making a start of some kind. * * *

Yours very sincerely,

JOHN D. PRINGLE,
Editor

TAFT & SHERMAN

Attorneys and Counsellors at Law
15 William Street, New York

October 2, 1916.

Secretary, Employers' Liability and Workmen's Compensation Commission,

State Capitol,
Salt Lake City, Utah.

Dear Sir:

Yours of the 21st ult. to the Executive Council of the National Civic Federation, enclosing copy of your tentative bill for workmen's compensation, has been referred to me by the Secretary. I have already gone over it looking for defects of form for the Workmen's Compensation Publicity Bureau, and my criticisms and suggestions will doubtless be communicated to you by Mr. Jones, the secretary of that Bureau.

As to substance, what the National Civic Federation approves and advocates is to be gathered from its publications which, I am informed, have already been sent you. Considering the difficultiess in your way to making compensation compulsory and exclusive of all liability for damages, I think your bill complies with the standards set by the Civic Federation. Beyond that nobody is now competent and ready to speak for that organization.

Speaking for myself alone (and disregarding some features about which I have peculiar notions and as to which your bill follows the prevailing and generally accepted standards), I am of the opinion that the bill is very good, not only in substance, but also in detail. I would like to see it more liberal for cases of serious, certain and long-continued disablement; but caution about establishing a system of long-continued pensions is proper in the first step. And the bill would be a tremendous improvement over your existing law.

Yours very truly,

P. TECUMSEH SHERMAN.

WORKMEN'S COMPENSATION PUBLICITY BUREAU

From a letter of F. Robertson Jones, Secretary of Workmen's Compensation Publicity Bureau, No. 80 Maiden Lane, New York City:

Constitutional amendment. I think that it would be advisable for your Commission in its report to recommend an amendment to your state constitution to empower the legislature to enact a compulsory workmen's compensation law, specifically authorizing a limitation upon employers' liability for compensation fro death by occupational accident. But the problem of framing such an amendment is so particularly a matter for local counsel that we would not like to presume to advise you thereon.

Regulation of Mutuals. Foreign experience shows that mutual insurance will not be successful nor protect its members from very unexpected and disturbing shocks unless the risks are peculiarly well distributed. The welfare of employers and their employees, therefore, calls for what may appear like very severe regulations of mutuals in order to secure something approaching to a proper distribution of risks.

Mutuals should be required to maintain reserves sufficiento to cover all outstanding liabilities, under approximately the same conditions as a stock company. Otherwise there should be severe regulations as to dividends and the withdrawing members should remain liable to assessment for 333 1-3 weeks after withdrawal.

MAY DAY MINING & MILLING CO.,
Office 515 Dooly Block
P. O. Box 1418

John Dern, President
M. P. Braffet, Vice-President
J. C. Dick, General Manager
W. S. McCornick, Treasurer
A. Reeves, Secretary

Salt Lake City, Utah, December 22, 1916.

Employers' Liability and Workmen's Compensation Commission,
City.

Gentlemen:

I have carefully examined the draft prepared by the Commission of the proposed Utah Compensation Law, and I think the Commission has been wise to recommend as simple and uncomplicated a law as possible for the beginning. Experience will teach us what changes to make and the recommendations of the Industrial Commission will be helpful at succeeding legislative sessions. The principal thing is to install a conservative, workable Compensation System. I take great pride in the fact that the great Chancellor Bismark was the originator of the Workmen's Compensation idea in Europe, and that no country has carried the principles of justice and humanity which Workmen's Compensation Laws embody to a greater degree of perfection than Germany.

Some criticism has been made on the schedule which you propose, in that it is larger than that in any of the surrounding States, except, perhaps, Nevada. We must not put our producers under too large a handicap in the beginning. If it appears that we are planning to at once install an unduly large schedule, in comparison with Wyoming and Coolrado, it will arouse the antagonism of Utah producers, whereas they would all heartily endorse a Compensation Bill that did not endanger their existence, and cheerfully pay the added cost that it will entail.

The Constitutional inhibition in case of death, while unfortunate, is not vital. I understand that Oklahoma had the same difficulty, but she installed the system and later cured the defect by a constitutional amendment. If a farmer had a stump in a fertile field he would plough around it until it could be removed, and not let the field lie untilled.

Your proposed law seems to follow the usual lines laid down by the majority of the thirty-two Compensation States, and strikes a very fair average.

Several weeks ago I received a letter from Mr. Fr. Von Fischer Tnherz, Austrian Vice-Consul at Denver, stating that he understood

that a Commission had been appointed to prepare a Workmen's Compensation and Employers' Liability measure, and report to the incoming legislature, and inasmuch as a great many Austrians are employed in the mines and smelters in Utah, he was very much interested in the matter, and would appreciate it if I could give him a synopsis of the proposed measure. I sent him the copy of the bill which Mr. Windsor had the kindness to give me, and asked him to make such criticism and recommendations as he cared to and I would be glad to submit same to the Commission. I enclose herewith his reply, from which you will note that in general he seems to express satisfaction with the proposed bill, but feels that the time allowed for giving notice of accident, which is thirty days, and the time allowed for the filing of claim in the case of death, which is one year, should be extended, and that the limit allowed for recovery ($1,000) in alien cases should be amplified to $1,500. He also recommends payment for life in cases of total disability. He approves the provisions for the commutation of alien indemnities, so that an early, complete closing of a death claim can be made, but feels that the rate of discount (6 per cent) is rather high.

I hope to see a Compensation Law replace the present iniquitous Employers' Liability System, whereby few recover and many suffer, at the coming session of the legislature.

Yours very truly,

JOHN DERN.

WESLEY KING

309 South Main Street

Salt Lake City, Utah, December 23rd, 1916.

Employers' Liability and Workmen's Compensation Commission,
City.

Gentlemen:

In your report to the Legislature on the matter of a workman's compensation act for Utah, I suggest that you discuss the question of insurance. Under any compensation plan, both employer and employe must be assured of an adequate and practical provision for insuring the payments for injuries as fixed by the proposed law.

Having been interested in the manufacturing business in eight of our western states, in building construction business in Utah and in the surety and casualty business in all the mountain and coast states for some years past, I have taken a keen interest in this phase of the subject and have studied carefully the experiments which our sister states have made, and have reached some definite conclusions.

Few today contest the plan of fixed compensation for injuries incident to industrial operations. The workingman feels that he is entitled to it and most employers want him to have it. Providing for this compensation has been considered a problem. It is exactly the same problem presented by fire, life, burglary or other similar loss. A problem which has been satisfactorily solved through the organization of insurance companies. It has not yet been satisfactorily solved by any

state insurance plan. Some states have provided for the distribution of funds collected by assessments upon employers. None have absolutely insured the employer. None have absolutely insured the employe.

In the Montana law we find as follows:

"If at any time there shall not be sufficient money in the Accident Fund with which to pay any warrants drawn thereon, the employer, on account of whose workmen the warrant was drawn, shall pay the same, and upon his next contribution to such fund he shall be credited with the amount so paid."

In this provision I find no insurance.

In Section 40 of the Nevada law there occurs the following stipulation:

"The State of Nevada shall not be liable for the payment of any compensation under this act, save and except from the said State insurance fund, to be derived from the payment of premiums as provided in this act."

In a later amendment, we also find:

"The State of Nevada shall not be liable for the payment of any compensation or any salary or expenses in the administration of this act, save and except from the State Insurance Fund, but shall be responsible for the safety and preservation of the State Insurance Fund."

Other States having State Funds have similar provisions.

The criticism is certainly well founded that:

"State Funds, whether monopolistic or competitive, give no guarantee of solvency, nor provide either adequate reserves or surplus. They are Public Mutuals lacking enough volume to secure an insurable average; managed by officers appointed by the political heads in power instead of having officers among business men responsible to those who pay the premiums."

Most certainly the State should guarantee the same prompt payment to those who are in distress that is required of any other insurance carrier, whether Stock Company or Mutual, even if a catastrophe such as the Schofield disaster causes a drawing upon other State Funds, or else it should not undertake the responsibility at all, but should leave it to carefully supervised companies of unquestioned responsibility.

The experience of West Virginia, whose State Fund was made insolvent by catastrophes to the amount of half a million dollars; that of the New York State Compensation Fund, which has been obliged to pass the payment of its dividends; that of the Wisconsin State Fire Fund, which has gone bankrupt with forty-three million dollars of insurance still in force; that of the Hail Insurance Fund of North Dakota, which has now announced that it would probably be able to pay 38 cents on the dollar for 1916 and which never did pay its losses in full; that of the State of Washington, whose Insurance Fund is impaired by over half a million dollars, according to their State Auditor, Mr. C. W. Clausen, who makes the charge that looseness of management has made it easy for various irregularities to occur and that a vital defect in the operation of the law is in the employment of men and women lacking in ability and in experience, as a result of political preference, together with the criticisms and comments of Chairman Caldwell of the Kentucky Compensation Board concerning the operations of the Ohio Industrial Accident Fund, are interesting in the study of this important question. The fact that several Insurance Companies have lately been obliged to retire from business, or to reinsure on account of their experience with the Employers' Liability and Workmen's Compensation lines and that several large and well-managed Companies have lately announced that they will discontinue these lines until the experience and the data and statistics have become more reliable, lead me to recommend that the State

of Utah follow the example of the large majority of States having Compensation Laws and do not, in the beginning, at least, complicate the installing of the proposed Act with this and other matters that should be inaugurated by separate Acts or amendments as later experience justifies.

The way is open for all who think there are profits in this line of business to join in the establishment of privately operated Mutual Insurance Companies, whose members should be under an unlimited responsibility for all losses, which should be under State supervision, so that proper reserves to carry all installments of Compensation to maturity, should be maintained.

I am impressed with what the Connecticut Compensation Commission said in its report submitting a proposed Compensation Act:

"Under the plan recommended by the act submitted herewith, there is a direct responsibility by the employer to the workman. The workman's claim is privileged, in case of insolvency, over all others. In case the employer takes out insurance, as he almost universally will, the claim of the injured workman is made a lien upon the policy, so that the insurance company is bound to see to its payment in case of the inability of the employer. The workman therefore is doubly secured for payment.

"The expense of state-managed insurance must of necessity be large. A high order of ability and experience would be necessary in its management, which must be adequately paid, and the expenses of actuaries and other employes would be heavy.

"It is against the general American policy for the State to assume the transaction of business until it sufficiently appears that there is a strong necessity for such a step. This does not so far appear. It is the general belief in this country that, except in a certain narrow class of activities, the State does not manage business with as much economy and efficiency as private concerns.

"For these reasons the Connecticut Commission has deemed it not advisable to recommend either state or state-managed insurance."

Our sister states, Wyoming and Nevada, are now experimenting with state insurance. The compensation laws in those states cover only the extra-hazardous occupations, so that their experience may not ever prove much of a guide until their laws are expanded to include general employment, nor indeed until they have accumulated some real experience, which only a lapse of several years makes possible. As yet they are too young in the business to serve as a guide for Utah legislators.

I sincerely trust that the Utah Commission will not only advise against the adoption of state insurance, but will strongly oppose it. I see no difference between the state engaging in this character of enterprise than in any of the hundreds of other commercial endeavors. If it may write compensation insurance, then why not life, fire, personal accident and health and automobile insurance; why not the hardware, grocery and drug business; why not the manufacture of shoes, sugar and such like, and why not conduct five-and-ten-cent stores? The principle is the same, and the result would be the same—bankruptcy for the state and, finally, socialism.

Cordially yours,

WESLEY KING.

W. H. DICKSON

ATTORNEY AT LAW

Kearns Building

Salt Lake City, December 9, 1916.

Employers' Liability and Workmen's Compensation Commission.
Gentlemen:

In compliance with your request that I give a brief expression of my views respecting the proposed "Employers' Liability and Workmen's Compensation Act," drafted by you, I have to say that I have read and considered the same attentively and find that it embodies the best features of similar legislation in many of the states of the Union.

The only criticism I have to make is respecting the compensation which it provides for cases of total and permanent disability. I believe that in every such case the bill should provide for, at least, SOME compensation during the life of the person so injured. Section 29 of the proposed bill provides for a weekly compensation equal to 50 per cent. of the injured person's average weekly wages, for a period not to exceed 333 1-3 weeks. It is apparent, I think, that it would be impossible for such injured employe to save anything from this weekly compensation. All of it would be required for his subsistence, and at the end of that period, if he so long lived, he would be without any means of support, and become a public charge, or be dependent upon the charity of his friends.

The legislation which this bill proposes would be a great improvement upon our present law and could not fail to prove highly beneficial to the wage earner. As the law stands today, the injured employe can recover nothing unless he is able to satisfy a jury that his injuries, however severe, are the result of the negligence of his employer. Again, he cannot recover if his injuries are the result of his contributory negligence. Finally, he cannot recover, no matter how free from blame he himself may have been, if his injuries are the result of the negligence of a fellow servant, within the meaning of the law. Moreover, if he should be so fortunate as to obtain judgment for an amount which a jury may find him to be entitled to, merely as adequate compensation for the injuries sustained, a large proportion of his recovery, varying, as I understand, from 30 to 50 per cent. thereof, must be yielded to the attorney who conducted his case.

It would, of course, be impossible for the wit of man to draft a bill which would result in exact justice to the employer and employe, in each and every case. Whatever imperfections, if any, there may be in your proposed legislation, experience alone will disclose, and when thus discovered, may be readily cured by future amendments.

I have examined carefully Sections 6 and 11 of the proposed Act. These sections have been drawn with great care, and I believe that the courts will hold that none of the provisions of either is in conflict with Section 5 of Article 16 of our Constitution.

Very truly yours,

W. H. DICKSON.

STATE OF UTAH

Employers' Liability and

WORKMEN'S COMPENSATION COMMISSION

STATE CAPITOL

Ogden, Utah, December 29, 1916.

Mr. Le Grand Young,
Deseret National Bank Building,
Salt Lake City, Utah.

My dear Sir:

Not being able to come to Salt Lake just at this time to sign the finally corrected report, I wish you to sign same for me as fully and completely as though by my own hand.

In doing so, I wish to say that the report embodies my ideas in that we feel that it is best to only recommend a very conservative bill for the beginning and secure the installation of the Compensation System.

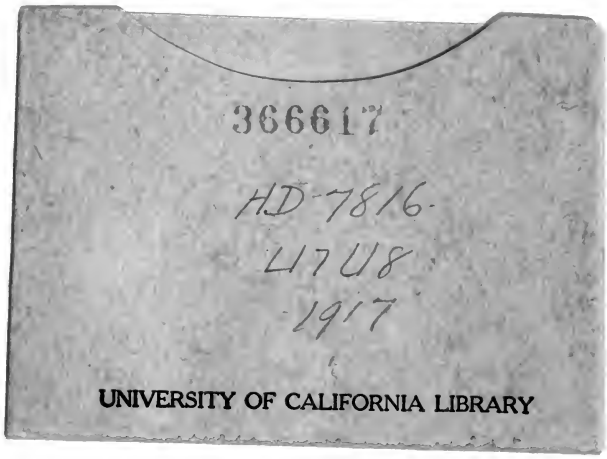
There are many things in the recommended bill that I should like to modify, but I do not thing it best to enumerate them now, being sure that time and experience will bring us nearer to perfection.

I sincerely hope to see the amount payable in case of total disability raised to $5,000, or to be for life, and the maximum of weekly indemnity raised to $15 in the near future, not only in Utah, but in all States, particularly those on our borders.

I hope they will pass the bill which has cost us so much hard work as it is, and improve it by later amendments.

Yours very truly,

CHARLES H. PEARSON.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